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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 12, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



Contents

Federal Register

Vol. 74, No. 84

Monday, May 4, 2009

Agriculture Department

See Forest Service
See National Agricultural Statistics Service
See Risk Management Agency

Army Department

See Engineers Corps

Centers for Disease Control and Prevention

NOTICES

Meetings:

Disease, Disability, and Injury Prevention and Control
 Special Emphasis Panel, 20487

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals,
 Submissions, and Approvals, 20483–20484

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals,
 Submissions, and Approvals, 20486–20487

Coast Guard

RULES

Alternate Compliance Program:
 Vessel Inspection Alternatives, 20416–20419
 Safety Zones:
 Allegheny River, Pittsburgh, PA, 20414–20416
 Barge BDL235, Pago Pago Harbor, American Samoa,
 20412–20413

NOTICES

Meetings:
 Houston/Galveston Navigation Safety Advisory
 Committee, 20491–20492

Commerce Department

See Foreign–Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Acquisition Regulations System

NOTICES

Agency Information Collection Activities; Proposals,
 Submissions, and Approvals, 20469–20470

Defense Department

See Defense Acquisition Regulations System
See Engineers Corps

Education Department

NOTICES

Agency Information Collection Activities; Proposals,
 Submissions, and Approvals, 20470–20472

Energy Department

See Federal Energy Regulatory Commission

PROPOSED RULES

Assistance Regulations, 20427

NOTICES

Agency Information Collection Activities; Proposals,
 Submissions, and Approvals, 20472–20474

Engineers Corps

NOTICES

Environmental Impact Statements, Availability, etc.:
 Newhall Ranch Resource Management and Development
 Plan and Spineflower Conservation Plan, Los
 Angeles County, CA, 20470

Federal Aviation Administration

RULES

Class E Airspace; Amendment:
 Refugio, TX, 20410–20411

PROPOSED RULES

Airworthiness Directives:

Thrush Aircraft, Inc. (Type Certificate previously held by
 Quality Aerospace, Inc. and Ayres Corporation)
 Model 600 S2D and S2R (S–2R) Series Airplanes,
 20431–20443

Proposed Establishment of VOR Federal Airway V–626; UT,
 20443–20444

Special Conditions:

Model C–27J Airplane; Interaction of Systems and
 Structures, 20427–20431

Federal Communications Commission

RULES

Radio Broadcasting Service:
 Cuba, IL, 20419–20420
 Radio Broadcasting Services:
 Marquez, TX, 20420–20421
 Worthington, IN, 20420

PROPOSED RULES

Radio Broadcasting Services:
 Waverly, AL, 20444
 Radio Broadcasting Services:
 Cut Bank, MT, 20445
 Laramie, WY, 20445

Federal Election Commission

NOTICES

Meetings: Sunshine Act, 20480

Federal Energy Regulatory Commission

NOTICES

Applications:

AmerenUE, 20474
 Hydrodynamics, Inc., 20474–20475

Blanket Authorizations:

Panoche Energy Center, LLC, 20475–20476

Combined Notice of Filings, 20476–20477

Complaints:

Connecticut DPUC, et al. v. ISO New England, 20477

Filings:

Big Rivers Electric Corp., 20479
 Pacific Gas and Electric Co., 20478–20479
 Robbins Energy LLC, 20478
 Willwood Irrigation District, 20477–20478

Protective Order:

BJ Energy LLC et al. v. PJM Interconnection, LLC, 20479–
 20480

Technical Conferences, Site Visits, Meetings:
 Tacoma, WA, 20480

Federal Motor Carrier Safety Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20522–20523
Meetings; Sunshine Act, 20523
Qualification of Drivers; Exemption Applications: Vision, 20523–20524

Fiscal Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20524–20525
Surety Companies Acceptable on Federal Bonds: National Casualty Co., 20525

Fish and Wildlife Service**RULES**

Interagency Cooperation Under the Endangered Species Act, 20421–20423

NOTICES

Environmental Assessment; Availability, etc.: Ernest F. Hollings ACE Basin National Wildlife Refuge, Charleston, Beaufort, Colleton and Hampton Counties, SC, 20495–20497

Food and Drug Administration**NOTICES**

Pediatric Device Consortia Grant Program, 20488–20489

Foreign–Trade Zones Board**NOTICES**

Applications: Foreign–Trade Zone, Kern County, CA, 20459

Forest Service**NOTICES**

Annual List of Newspapers to be used by the Alaska Region for Publication of Legal Notices of Proposed Actions and Notices of Decisions Subject to Administrative Appeal Under 36 CFR 215, 20451–20452

General Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20480–20481

Health and Human Services Department

See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20481–20482
Interest Rate on Overdue Debts, 20482

Health Resources and Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20484–20485

Homeland Security Department

See Coast Guard
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Housing and Urban Development Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20492–20493
Funding Availability (NOFA) for Fiscal Year (FY) 2009: Brownfields Economic Development Initiative, 20494
Rural Housing and Economic Development Program, 20493–20494

Indian Health Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20485–20486

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration**NOTICES**

Antidumping: Fresh Garlic from the People's Republic of China, 20452–20459
Application(s) for Duty-Free Entry of Scientific Instruments: Princeton University, 20459

International Trade Commission**NOTICES**

Investigations: Wireless Communications Devices, 20500–20501

Justice Department

See Justice Programs Office

Justice Programs Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20501–20503

Labor Department

See Veterans Employment and Training Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20503

Land Management Bureau**NOTICES**

Alaska Native Claims Selection, 20494–20495
Public Land Orders: Dog Canyon Road in Central Otero County, Las Cruces District Office, NM, 20499
New Mexico; Correction, 20500
Temporary Closure at Stuart Ranch, Clark County, NV, 20499–20500
Survey Plat Filings: Idaho, 20500

National Agricultural Statistics Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20450–20451

National Archives and Records Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20504–20505

National Highway Traffic Safety Administration**PROPOSED RULES**

Federal Motor Vehicle Safety Standards:
Occupant Crash Protection, 20445–20448

National Institutes of Health**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20482–20483
Meetings:
National Cancer Institute, 20488
National Institute on Drug Abuse, 20487

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Northeastern United States:
Atlantic Bluefish Fishery; 2009 Atlantic Bluefish
Specifications, 20423–20426
Vessel Monitoring System (VMS), 20528–20557
Interagency Cooperation Under the Endangered Species
Act, 20421–20423

PROPOSED RULES

Fisheries of the Northeastern United States:
Tilefish, 20448–20449

NOTICES

Applications:
Ocean Education Grants for AZA Aquariums;
Availability, 20459–20464
Environmental Impact Statements; Availability, etc.:
Mid-Atlantic Fishery Management Council; Catch Limits,
etc., 20464–20465
Implementation of New Competitive Prevention, Control,
and Mitigation of Harmful Algal Blooms (HAB)
Program and Regional Rotation of the Existing and New
National Competitive HAB Programs, 20465–20469
Marine Mammals:
File No. 633–1763; Withdrawal of Application, 20469

National Park Service**NOTICES**

Meetings:
Cape Cod National Seashore Advisory Commission,
20497
National Register of Historic Places:
Notification of Pending Nominations and Related
Actions, 20497–20498
Weekly Listing of Historic Properties, 20498

National Science Foundation**NOTICES**

Meetings; Sunshine Act, 20505–20507

Nuclear Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20507–20508
Environmental Impact Statements; Availability, etc.:
Eagle Rock Enrichment, Idaho Falls, ID, 20508–20509
Final Regulatory Guide; Issuance, Availability, 20509–
20510
Interim Staff Guidance on Assessing the Consequences of
an Accidental Release of Radioactive Materials from
Liquid Waste Tanks, 20510

Personnel Management Office**RULES**

Prevailing Rate Systems:
Redefinition of Certain Appropriated Fund Federal Wage
System Wage Areas, 20405–20410

Postal Regulatory Commission**NOTICES**

New Competitive Postal Product, 20510–20511

Public Debt Bureau

See Fiscal Service

Risk Management Agency**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20450

Securities and Exchange Commission**RULES**

Delegation of Authority to the General Counsel, 20411–
20412

NOTICES

Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 20518–20519
Financial Industry Regulatory Authority, Inc., 20519–
20522
New York Stock Exchange LLC, 20516–20518
NYSE Arca, Inc., 20512–20513
The Depository Trust Co., 20513–20514
The NASDAQ Stock Market LLC, 20514–20516

Small Business Administration**NOTICES**

Exemptions:
Horizon Ventures Fund II, L.P., 20511–20512

Statistical Reporting Service

See National Agricultural Statistics Service

Transportation Department

See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration

Treasury Department

See Fiscal Service

U.S. Citizenship and Immigration Services**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20489–20490

U.S. Customs and Border Protection**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20490–20491
Commercial Gauger and Laboratory; Approval and
Accreditation:
Amspec Services LLC, 20491
Camín Cargo Control, Inc., 20491

Veterans Employment and Training Service**NOTICES**

Veterans Workforce Investment Program, 20503–20504

Separate Parts In This Issue**Part II**

Commerce Department, National Oceanic and Atmospheric
Administration, 20528–20557

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR

532.....20405

10 CFR**Proposed Rules:**

600.....20427

14 CFR

71.....21410

Proposed Rules:

25.....20427

39.....20431

71.....20443

17 CFR

200.....20411

33 CFR

165 (2 documents)20412,
20414

46 CFR

2.....20416

8.....20416

189.....20416

47 CFR

73 (3 documents)20419,
20420

Proposed Rules:

73 (3 documents)20444,
20445

49 CFR**Proposed Rules:**

571.....20445

50 CFR

402.....20421

648 (2 documents)20423,
20528

Proposed Rules:

648.....20448

Rules and Regulations

Federal Register

Vol. 74, No. 84

Monday, May 4, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AL77

Prevailing Rate Systems; Redefinition of Certain Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule to redefine the geographic boundaries of several appropriated fund Federal Wage System wage areas for pay-setting purposes. Based on recent reviews of Metropolitan Statistical Area boundaries in a number of wage areas, OPM is redefining the following wage areas: Birmingham, AL; Denver, CO; Wilmington, DE; Washington, DC; Atlanta, GA; Columbus, GA; Macon, GA; Chicago, IL; Bloomington-Bedford-Washington, IN; Indianapolis, IN; Louisville, KY; Baltimore, MD; Hagerstown-Martinsburg-Chambersburg, MD; St. Louis, MO; Southern Missouri; Omaha, NE; New York, NY; Philadelphia, PA; Scranton-Wilkes-Barre, PA; Eastern South Dakota; Richmond, VA; and Milwaukee, WI.

DATES: *Effective date:* This regulation is effective on May 4, 2009. *Applicability date:* Agencies will place affected employees on their new wage schedule on the first day of the first applicable pay period beginning on or after June 3, 2009.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606-2838; e-mail *pay-performance-policy@opm.gov*; or FAX: (202) 606-4264.

SUPPLEMENTARY INFORMATION: On January 14, 2009, the U.S. Office of Personnel Management (OPM) issued a proposed rule (74 FR 1948) to redefine

the geographic boundaries of several appropriated fund Federal Wage System (FWS) wage areas. This proposed rule would redefine the following counties:

- Chilton County, AL, to the Birmingham, AL, area of application;
- Broomfield County, CO, to the Denver, CO, survey area;
- Clarke, Spotsylvania, and Warren Counties, VA; Fredericksburg City, VA; and Jefferson County, WV, to the Washington, DC, area of application;
- Jasper, Lamar, and Meriwether Counties, GA, to the Atlanta, GA, area of application;
- Kenosha County, WI, to the Chicago, IL, area of application;
- Brown County, IN, to the Indianapolis, IN, area of application;
- Union County, SD, to the Omaha, NE, area of application;
- Washington County, IN, to the Louisville, KY, area of application;
- Queen Anne's County, MD, to the Baltimore, MD, area of application;
- Moniteau County, MO, to the St. Louis, MO, area of application;
- Hunterdon County, NJ, and Pike County, PA, to the New York, NY, area of application; and
- Carbon County, PA, to the Philadelphia, PA, area of application.

The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

John Berry,
Director, U.S. Office of Personnel Management.

■ Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings for Birmingham, AL; Denver, CO; Wilmington, DE; Washington, DC; Atlanta, GA; Columbus, GA; Macon, GA; Chicago, IL; Bloomington-Bedford-Washington, IN; Indianapolis, IN; Louisville, KY; Baltimore, MD; Hagerstown-Martinsburg-Chambersburg, MD; St. Louis, MO; Southern Missouri; Omaha, NE; New York, NY; Philadelphia, PA; Scranton-Wilkes-Barre, PA; Eastern South Dakota; Richmond, VA; and Milwaukee, WI, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

ALABAMA

* * * * *

Birmingham
Survey Area

Alabama:
Jefferson
St. Clair
Shelby
Tuscaloosa
Walker

Area of Application. Survey area plus:

Alabama:
Bibb
Blount
Chilton
Cullman
Fayette
Greene
Hale
Lamar
Marengo
Perry
Pickens

* * * * *

COLORADO

Denver

Survey Area

Colorado:
Adams
Arapahoe
Boulder
Broomfield
Denver
Douglas
Gilpin
Jefferson

Area of Application. Survey area plus:

Colorado:
Clear Creek
Eagle

Elbert	Fredericksburg	Whitfield
Garfield	Virginia (counties):	* * * *
Grand	Clarke	
Jackson	Fauquier	Columbus
Lake	King George	<i>Survey Area</i>
Larimer	Spotsylvania	Georgia (counties):
Logan	Stafford	Chattahoochee
Morgan	Warren	Georgia (consolidated government):
Park	West Virginia:	Columbus
Phillips	Jefferson	Alabama:
Pitkin		Autauga
Rio Blanco	* * *	Elmore
Routt		Lee
Sedgwick	GEORGIA	Macon
Summit		Montgomery
Washington	* * *	Russel
Weld	Atlanta	<i>Area of Application. Survey area plus:</i>
Yuma	<i>Survey Area</i>	Georgia:
* * *	Georgia:	Harris
	Butts	Marion
DELAWARE	Cherokee	Quitman
Wilmington	Clayton	Schley
<i>Survey Area</i>	Cobb	Stewart
Delaware:	De Kalb	Talbot
Kent	Douglas	Taylor
New Castle	Fayette	Webster
Maryland:	Forsyth	Alabama:
Cecil	Fulton	Bullock
New Jersey:	Gwinnett	Butler
Salem	Henry	Chambers
<i>Area of Application. Survey area plus:</i>	Newton	Coosa
Delaware:	Paulding	Crenshaw
Sussex	Rockdale	Dallas
Maryland:	Walton	Lowndes
Caroline	<i>Area of Application. Survey area plus:</i>	Pike
Dorchester	Georgia:	Tallapoosa
Kent	Banks	Wilcox
Somerset	Barrow	Macon
Talbot	Bartow	<i>Survey Area</i>
Wicomico	Carroll	Georgia:
Worcester (Does not include the	Chattooga	Bibb
Assateague Island portion.)	Clarke	Houston
* * *	Coweta	Jones
	Dawson	Laurens
DISTRICT OF COLUMBIA	Fannin	Twiggs
Washington, DC	Floyd	Wilkinson
<i>Survey Area</i>	Franklin	<i>Area of Application. Survey area plus:</i>
District of Columbia:	Gilmer	Georgia:
Washington, DC	Gordon	Baldwin
Maryland:	Greene	Bleckley
Charles	Habersham	Crawford
Frederick	Hall	Crisp
Montgomery	Haralson	Dodge
Prince George's	Heard	Dooley
Virginia (cities):	Jackson	Hancock
Alexandria	Jasper	Johnson
Fairfax	Lamar	Macon
Falls Church	Lumpkin	Monroe
Manassas	Madison	Montgomery
Manassas Park	Meriwether	Peach
Virginia (counties):	Morgan	Pulaski
Arlington	Murray	Putnam
Fairfax	Oconee	Telfair
Loudoun	Oglethorpe	Treutlen
Prince William	Pickens	Upson
<i>Area of Application. Survey area plus:</i>	Pike	Washington
Maryland:	Polk	Wheeler
Calvert	Rabun	Wilcox
St. Mary's	Spalding	* * *
Virginia (city):	Stephens	ILLINOIS
	Towns	
	Union	
	White	

* * * * *	Livingston	Jennings
	McLean	Scott
Chicago	Ohio	Washington
<i>Survey Area</i>	Union	
Illinois:	Webster	* * * *
Cook		MARYLAND
Du Page	* * * *	
Kane		* * * *
Lake	Indianapolis	
McHenry	<i>Survey Area</i>	Baltimore
Will	Indiana:	<i>Survey Area</i>
<i>Area of Application. Survey area plus:</i>	Boone	Maryland:
Illinois:	Hamilton	Baltimore City
Boone	Hancock	Anne Arundel
De Kalb	Hendricks	Baltimore
Grundy	Johnson	Carroll
Iroquois	Marion	Harford
Kankakee	Morgan	Howard
Kendall	Shelby	<i>Area of Application. Survey area plus:</i>
La Salle	<i>Area of Application. Survey area plus:</i>	Maryland:
Lee	Indiana:	Queen Anne's
Livingston	Bartholomew	Hagerstown-Martinsburg-Chambersburg
Ogle	Brown	<i>Survey Area</i>
Stephenson	Clay	Maryland:
Winnebago	Clinton	Washington
Indiana:	Decatur	Pennsylvania:
Benton	Delaware	Franklin
Jasper	Fayette	West Virginia:
Lake	Fountain	Berkeley
La Porte	Henry	<i>Area of Application. Survey area plus:</i>
Newton	Madison	Maryland:
Porter	Montgomery	Allegany
Pulaski	Parke	Garrett
Starke	Putnam	Pennsylvania:
Wisconsin:	Rush	Fulton
Kenosha	Sullivan	Virginia (cities):
	Tippecanoe	Harrisonburg
INDIANA	Tipton	Winchester
Bloomington-Bedford-Washington	Vermillion	Virginia (counties):
<i>Survey Area</i>	Vigo	Culpeper
Indiana:	Warren	Frederick
Daviess	* * * *	Greene
Greene		Madison
Knox	KENTUCKY	Page
Lawrence		Rappahannock
Martin	* * * *	Rockingham
Monroe		Shenandoah
Orange	Louisville	West Virginia:
<i>Area of Application. Survey area plus:</i>	<i>Survey Area</i>	Hampshire
Indiana:	Kentucky:	Hardy
Crawford	Bullitt	Mineral
Dubois	Hardin	Morgan
Gibson	Jefferson	* * * *
Jackson	Oldham	MISSOURI
Owen	Indiana:	
Perry	Clark	* * * *
Pike	Floyd	
Posey	Jefferson	St. Louis
Spencer	<i>Area of Application. Survey area plus:</i>	<i>Survey Area</i>
Vanderburgh	Kentucky:	Missouri:
Warrick	Breckinridge	St. Louis City
Illinois:	Grayson	Franklin
Edwards	Hart	Jefferson
Gallatin	Henry	St. Charles
Hardin	Larue	St. Louis
Lawrence	Meade	
Richland	Nelson	Illinois:
Wabash	Shelby	Clinton
White	Spencer	Madison
Kentucky:	Trimble	Monroe
Crittenden	Indiana:	
Daviess	Harrison	
Hancock		
Henderson		

St. Clair	Cape Girardeau	Dodge
<i>Area of Application. Survey area plus:</i>	Carter	Dundy
Missouri:	Cedar	Fillmore
Audrain	Dade	Franklin
Boone	Dallas	Frontier
Callaway	Dent	Furnas
Clark	Douglas	Gage
Cole	Hickory	Garfield
Crawford	Howell	Gosper
Gasconade	Iron	Grant
Knox	Jasper	Greeley
Lewis	Lawrence	Hall
Lincoln	McDonald	Hamilton
Marion	Madison	Harlan
Moniteau	Maries	Hayes
Monroe	Miller	Hitchcock
Montgomery	Mississippi	Holt
Osage	Morgan	Hooker
Pike	New Madrid	Howard
Ralls	Newton	Jefferson
Randolph	Oregon	Johnson
St. Francois	Ozark	Kearney
Ste. Genevieve	Perry	Keith
Scotland	Polk	Keya Paha
Shelby	Reynolds	Knox
Warren	Ripley	Lincoln
Washington	St. Clair	Logan
Illinois:	Scott	Loup
Alexander	Shannon	McPherson
Bond	Stoddard	Madison
Calhoun	Stone	Merrick
Clay	Taney	Nance
Effingham	Texas	Nemaha
Fayette	Vernon	Nuckolls
Franklin	Wayne	Otoe
Greene	Wright	Pawnee
Hamilton	Kansas:	Perkins
Jackson	Cherokee	Phelps
Jefferson	Crawford	Pierce
Jersey	*	Platte
Johnson	*	Polk
Macoupin	*	Red Willow
Marion	*	Richardson
Massac	*	Rock
Montgomery	*	Saline
Morgan	NEBRASKA	Saunders
Perry	Omaha	Seward
Pike	<i>Survey Area</i>	Sherman
Pope	Nebraska:	Stanton
Pulaski	Douglas	Thayer
Randolph	Lancaster	Thomas
Saline	Sarpy	Thurston
Scott	Iowa:	Valley
Union	Pottawattamie	Washington
Washington	<i>Area of Application. Survey area plus:</i>	Wayne
Wayne	Nebraska:	Webster
Williamson	Adams	Wheeler
Southern Missouri	Antelope	York
<i>Survey Area</i>	Arthur	Iowa:
Missouri:	Blaine	Adams
Christian	Boone	Audubon
Greene	Boyd	Buena Vista
Laclede	Brown	Cass
Phelps	Buffalo	Cherokee
Pulaski	Burt	Clay
Webster	Butler	Crawford
<i>Area of Application. Survey area plus:</i>	Cass	Fremont
Missouri:	Cedar	Harrison
Barry	Chase	Ida
Barton	Cherry	Mills
Benton	Clay	Monona
Bollinger	Colfax	Montgomery
Butler	Cuming	O'Brien
Camden	Custer	Page
	Dakota	Palo Alto
	Dawson	Plymouth
	Dixon	

[illegible]

Mecklenburg
Middlesex
Northumberland
Nottoway
Orange
Prince Edward
Richmond
Sussex
Westmoreland

* * * * *

WISCONSIN

* * * * *

**Milwaukee
Survey Area**

Wisconsin:
Milwaukee
Ozaukee
Washington
Waukesha
Area of Application. Survey area plus:

Wisconsin:
Brown
Calumet
Door
Fond du Lac
Kewaunee
Manitowoc
Outagamie
Racine
Sheboygan
Walworth
Winnebago

[FR Doc. E9-10177 Filed 5-1-09; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0241; Airspace
Docket No. 09-ASW-6]

Amendment of Class E Airspace; Refugio, TX

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of the Class E airspace at Refugio, TX. It removes the reference to the Rockport, TX, Class E airspace area to reflect its incorporation into the Corpus Christi, TX, Class E airspace area (74 FR 7560). All other legal descriptions for the Refugio, TX, airspace area remain the same.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT:
Scott Enander, Central Service Center,
Operations Support Group, Federal
Aviation Administration, Southwest
Region, 2601 Meacham Blvd, Fort
Worth, TX 76193-0530; telephone (817)
321-7716.

SUPPLEMENTARY INFORMATION:

History

On February 18, 2009, the FAA published in the **Federal Register** a final rule to revoke Class E airspace at Rockport, TX (74 FR 7560, Docket No. FAA-2008-0988). This airspace was incorporated into the Corpus Christi, TX, Class E surface area (74 FR 7557, Docket No. FAA-2008-0987). The FAA now will remove reference to the Rockport, TX, airspace area from the Refugio, TX, airspace area. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Rockport, TX, from the legal description of the Class E airspace area at Refugio, TX.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is

promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the legal description for Class E airspace at Refugio, TX.

Since this is only an amendment to the legal description, and in consideration of the need to avoid confusion on the part of pilots flying in the vicinity of Refugio, TX, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Refugio, TX [Amended]

Refugio, Mellon Ranch Airport, TX
(Lat. 28°16'51" N., long. 97°12'41" W.)
Mellon Ranch NDB
(Lat. 28°16'48" N., long. 97°12'21" W.)
Refugio, Rooke Field, TX
(Lat. 28°17'37" N., long. 97°19'23" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Mellon Ranch Airport, and within 2.7 miles each side of the 345° bearing from the Mellon Ranch NDB extending from the 6.8-mile radius to 7.4 miles north of the airport, and within 2.7 miles each side of the 145° bearing from the Mellon Ranch NDB

extending from the 6.8-mile radius to 7.4 miles south of the airport, excluding that airspace within a ½ mile radius of Rooke Field, and excluding that airspace within the Corpus Christi, TX Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on April 22, 2009.

Roger M. Trevino,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. E9-9989 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-59829]

Delegation of Authority to the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate to the General Counsel its authority to designate officers in authorized investigations conducted by the Office of General Counsel. The Office of General Counsel of the Commission has the authority to conduct authorized investigations under Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) of possible violations by attorneys of the Commission Rules of Practice. In connection with these investigations, it may be necessary from time to time to amend the formal orders to add or remove officers designated to conduct the inquiry.

A delegation of authority to the General Counsel to designate officers would spare the Commissioners and their staffs from having to review matters in which the Commission has already issued an order and which implicate no policy issues. This would allow the General Counsel to designate additional officers to take testimony and conduct investigations in those matters or similarly remove officer designations as may be necessary. This authority is identical to that granted to the Director of the Division of Enforcement with respect to authorized investigations conducted by that Division.

DATES: *Effective Date:* May 4, 2009.

FOR FURTHER INFORMATION CONTACT: Donna McCaffrey, 202-551-5174, Office of General Counsel, Office of Litigation and Administrative Practice, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9612.

SUPPLEMENTARY INFORMATION: Section 21 (a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission to conduct investigations regarding violations of the Exchange Act or its related rules or regulations. As part of such investigations, under Section 21(b) of the Exchange Act, the Commission may designate officers to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records which the Commission deems relevant or material to the inquiry.

The Commission is delegating to the General Counsel the authority to designate additional officers in authorized investigations and to remove designated officers as necessary. This delegated authority will also apply to already authorized investigations by the Commission, so the delegation will allow the General Counsel to designate additional officers for an authorized investigation or rescind designations as the investigation proceeds.

Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate.

Administrative Law Matters:

The Commission finds, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. Therefore, the provisions of the APA regarding notice of the proposed rulemaking and opportunities for public participation are not applicable.¹ For the same reason, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.² Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.³ Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of any rules it adopts. The Commission does not believe this rule will have any impact on competition because it imposes no new burdens on parties in authorized investigations. Finally, these amendments do not contain any collection of information requirements as defined by the

¹ 5 U.S.C. 533.

² 5 U.S.C. 804(3)(C).

³ 5 U.S.C. 603.

Paperwork Reduction Act of 1995, as amended.⁴

Accordingly, it is effective May 4, 2009.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

■ For the reasons set out in the Preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.30-14 is amended by adding paragraph (m) to read as follows:

§ 200-30-14 Delegation of authority to the General Counsel.

* * * * *

(m)(1) To designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) including for possible violations by attorneys of Rule 102(e) of the Commission Rules of Practice (17 CFR 201.102(e)).

(2) To terminate the authority of officers to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) including for possible violations by attorneys of Rule 102(e) of the Commission Rules of Practice (17 CFR 201.102(e)).

By the Commission.

⁴ 44 U.S.C. 3501 *et seq.*

Dated: April 28, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-10123 Filed 5-1-09; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0159]

RIN 1625-AA00

Safety Zone; Barge BDL235, Pago Pago Harbor, American Samoa

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 100-foot (30.5 meter) radius safety zone around the 142 foot Barge BDL235 while it is performing operations in and around the CHEHALIS wreck. The wreck's approximate position is 14°16.52' S, 170°40.56' W (about 350 feet north of the fuel dock in Pago Pago Harbor, American Samoa). The safety zone is necessary to protect other vessels and the general public from hazards associated with dive operations.

DATES: This rule is effective from 6 a.m. local American Samoa time on April 23, 2009 through 8 p.m. local American Samoa time on May 09, 2009. If suspension of enforcement occurs earlier than May 9, 2009 notice of termination of the rule will be published in the **Federal Register** and will be announced over marine band VHF channel 16 to ensure ample public notification.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0159 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0159 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary

rule, call or e-mail Lieutenant Commander Marcella Granquist, Waterways Management Division, U.S. Coast Guard Sector Honolulu, telephone 808-842-2600, e-mail Marcella.A.Granquist@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 31, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Barge BDL235, Pago Pago Harbor, American Samoa in the **Federal Register** (73 FR 3316). We received no comments on the proposed rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The safety zone is necessary to protect other vessels, the general public, and the divers from hazards associated with dive operations.

Background and Purpose

On October 7, 1949 the 4,130-ton gasoline tanker CHEHALIS sank in Pago Pago Inner Harbor, in an estimated 160 feet of water, approximately 350 feet from the fuel dock located near Goat Island Point, Pago Pago, American Samoa. Today, the CHEHALIS wreck remains a potential pollution threat to the environment. The U.S. Coast Guard is scheduled to conduct dive operations to determine and mitigate the wreck's potential pollution threat to the area from April through May 2009.

Discussion of Comments and Changes

No comments were received and no changes were made.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Vessels will be able to transit around the zone. The Sector Honolulu Captain

of the Port will allow vessels in the zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities since vessels will be allowed to transit around the 100-foot temporary Safety Zone that will be centered over the CHEHALIS wreck at approximately 350 feet from the fuel dock in Pago Pago Inner Harbor, American Samoa.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–184 to read as follows:

§ 165.T14–184 Safety Zone; Barge BDL235, Pago Pago, American Samoa.

(a) *Location.* The following area is a temporary safety zone: All waters contained within a 100-foot (30.5 meter) radius around the 142 ft Barge, BDL235 while performing dive operations in and around the CHEHALIS wreck. The wreck’s approximate position is 14°16.52’ S, 170°40.56’ W (approximately 350 feet north of the fuel dock in Pago Pago Harbor, American Samoa). These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Samoa Islands, chart 83484.

(b) *Regulations.* (1) Entry into or remaining in the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu zone.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 1–808–842–2600, the U.S. Coast Guard Marine Safety Detachment American Samoa at telephone number 1–684–633–2299, or the Barge BDL235 on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Effective period.* This rule is effective from 6 a.m. local American Samoa time on April 23, 2009 through 8 p.m. local American Samoa time on May 9, 2009.

(d) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in the zone except for support vessels/aircraft and support personnel, or other vessels authorized by the Captain of the Port or his designated representatives.

(e) *Penalties.* Vessels or persons violating this rule would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: April 21, 2009.

B.A. Compagnoni,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. E9–10114 Filed 5–1–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2009–0149]

RIN 1625–AA00

Safety Zone; Allegheny River, Pittsburgh, PA**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard has established a temporary safety zone from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank. This safety zone is needed to protect spectators and vessels from the hazards associated with the Urban Adventure's Adventure Race event. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective from 9 a.m. until 11 a.m. on May 30, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0149 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0149 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Marine Safety Unit Pittsburgh, Suite 1150 Town Place, 100 Forbes Avenue, Pittsburgh, PA 15222, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Douglas Kang, Marine Safety Unit Pittsburgh, telephone 412–644–5808. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect participant and spectator craft from the hazards associated with Urban Adventure's Adventure Race event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect participant and spectator craft from the hazards associated with Urban Adventure's Adventure Race event.

Background and Purpose

The Coast Guard has established a temporary safety zone from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank. This safety zone is needed to protect spectators and vessels from the hazards associated with the Urban Adventure's Adventure Race event.

Discussion of Rule

The Captain of the Port Pittsburgh is establishing a safety zone from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule is effective from 9 a.m. until 11 a.m. on May 30, 2009. The Captain of the Port

Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit that portion of the waterways from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank from 9 a.m. to 11 a.m. on Saturday, May 30, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a short period of time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small

entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T0149 to read as follows:

§ 165.T0149 Safety Zone; Allegheny River, Pittsburgh, PA.

(a) *Location.* The following area is a Safety Zone: the portion of the waterways from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank.

(b) *Effective date.* This rule is effective from 9 a.m. until 11 a.m. on May 30, 2009.

(c) *Periods of Enforcement.* This rule will only be enforced from 9 a.m. until 11 a.m. on May 30, 2009. The Captain of the Port Pittsburgh or a designated representative will inform the public

through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh.

(2) Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: March 31, 2009.

S.T. Higman,

*Lieutenant Commander, U.S. Coast Guard,
Acting Captain of the Port Pittsburgh.*

[FR Doc. E9-10115 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 8, and 189

[Docket No. USCG-2004-19823]

RIN 1625-AA92

Alternate Compliance Program: Vessel Inspection Alternatives

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the vessel inspection regulations to expand the Alternate Compliance Program (ACP). Through these amendments, we are updating the list of certificates the Coast Guard issues, incorporating Coast Guard policy regarding eligibility requirements for classification societies participating in the ACP, recognizing classification societies other than the American Bureau of Shipping, and expanding the ACP to include oceanographic research vessels.

DATES: This rule is effective June 3, 2009

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2004-19823 and are

available for inspection at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. William Peters, U.S. Coast Guard Office of Design and Engineering Standards, at telephone 202-372-1371, or e-mail him at William.S.Peters@uscg.mil. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for the Preamble

- I. Abbreviations
- II. Background and Purpose
- III. Discussion of Comments
- IV. Discussion of Final Rule
- V. Regulatory Analyses
 - A. Regulatory Planning and Review
 - B. Small Entities
 - C. Assistance for Small Entities
 - D. Collection of Information
 - E. Federalism
 - F. Unfunded Mandates Reform Act
 - G. Taking of Private Property
 - H. Civil Justice Reform
 - I. Protection of Children
 - J. Indian Tribal Governments
 - K. Energy Effects
 - L. Technical Standards
 - M. Environment

I. Abbreviations

ACP Alternate Compliance Program
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 DMS Docket Management System
 DOT Department of Transportation
 FR Federal Register
 IMO International Maritime Organization
 NEPA National Environmental Policy Act of 1969
 NPRM Notice of Proposed Rulemaking
 NTTAA National Technology Transfer and Advancement Act
 NVIC Navigation and Vessel Inspection Circular
 PSSC Passenger Ship Safety Certificate
 HSC High-speed Craft
 RIN Regulation Identifier Number
 SIP Streamlined Inspection Program
 SOLAS International Convention for the Safety of Life at Sea
 US United States
 USC United States Code
 USCG United States Coast Guard
 VAP Vessel Action Plan

II. Background and Purpose

The Alternate Compliance Program (ACP) was launched as a pilot program in 1995. A notice about the ACP was published in the **Federal Register** on

February 3, 1995. 60 FR 6687. Under the ACP, owners and operators of eligible vessels may request inspection by an authorized classification society, as defined in 46 CFR 8.100, using an equivalence to the requirements in the Code of Federal Regulations (CFR) comprising classification society rules, provisions of International Maritime Organization (IMO) treaties, and a supplementary list of requirements from the CFR that were not in IMO provisions or classification society rules. A classification society gained eligibility to participate in the ACP by meeting the standards described in the regulations. If it met these standards, a classification society was recognized and delegated authority to conduct plan reviews and inspections, and issue, on the Coast Guard's behalf, certain IMO certificates documenting compliance with IMO treaty provisions.

An interim rule establishing new 46 CFR part 8, "Vessel Inspection Alternatives" was published in the **Federal Register** on December 27, 1996. 61 FR 68510. The pilot program was concluded in 1997 and the ACP was fully implemented by a final rule published on December 24, 1997. 62 FR 67526.

Predictably, the program has evolved since 1997 and the lessons learned have been documented and typically implemented through Coast Guard policy decisions, where appropriate. The May 2007 notice of proposed rulemaking (NPRM) preceding this final rule described the Coast Guard's plans to expand the ACP and incorporate the lessons we have learned into the CFR. 72 FR 28650, May 22, 2007. For example, when the ACP was initiated, the Coast Guard chose to retain issuing authority for the SOLAS Passenger Ship Safety Certificate (PSSC). This decision was based on our experience with the complexities of the passenger vessel plan review, inspection, and certification process. Experience has shown that retaining this issuing authority has created confusion over the roles of the Coast Guard versus the authorized classification society under the ACP. Experience with the ACP has also allowed us to gain confidence with the ACP process. Therefore, we decided to grant PSSC issuing authority to authorized classification societies.

For similar reasons, in the May 2007 NPRM, we proposed to delegate to authorized classification societies issuing authority for the High-Speed Craft (HSC) Safety Certificate. This follows our determination that the HSC Code is equivalent to the 46 CFR Subchapter H requirements for passenger vessels. We published our

decision in Navigation and Vessel Inspection Circular (NVIC) 6–99 on inspection of high-speed craft and in Policy Letter 01–00, dated May 3, 2000. NVIC 6–99 is available from the Coast Guard National Maritime Center on the World Wide Web at <http://www.uscg.mil/hq/gm/nvic/index90.htm>. Policy Letter number 01–00 is available in the docket for this rulemaking. As the Coast Guard and several classification societies have now gained significant experience with the HSC Code, it is now appropriate to add the HSC Certificate to the ACP.

Our experience with the success of the ACP has also given us the flexibility to explore applying the program to other types of vessels that were originally excluded under our measured implementation approach. Positive feedback and recommendations from the U.S. maritime industry gathered since we initiated ACP demonstrate broad support for this idea. As a result, in May 2007, we proposed that the ACP be expanded to encompass Oceanographic Research Vessels that engage in international voyages.

Soon after the ACP rules went into effect, we recognized that a classification society needs authorization to issue five basic IMO certificates to fully leverage ACP flexibility, namely:

- The Cargo Ship Safety Construction Certificate from the International Convention for Safety of Life at Sea, 1974;
- The Cargo Ship Safety Equipment Certificate from the International Convention for Safety of Life at Sea, 1974;
- The International Load Line Certificate from the International Convention on Load Lines;
- The International Tonnage Certificate from the International Convention on Tonnage Measurement; and
- The International Oil Pollution Prevention Certificate from the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973.

While we have implemented this concept as part of our operating policies, it had not been incorporated into 46 CFR part 8. Therefore, in our May 2007 NPRM, we proposed to revise 46 CFR part 8 to require that a classification society have authority to issue the five basic IMO certificates to be eligible to participate in the ACP.

The initial version of the ACP only applied to the American Bureau of Shipping with whom the Coast Guard had collaborated to develop the first U.S. Supplement—a list of differences

between the CFR and the combination of IMO treaty provisions and classification society rules. As the program has expanded, we have engaged in similar partnerships with other classification societies that are now approved to participate in the ACP. Consequently, our specific references to the American Bureau of Shipping in 46 CFR part 2 are outdated. Therefore, in May 2007, we proposed to replace specific references to the American Bureau of Shipping with a more general reference to authorized classification societies. The term “authorized classification society” is already defined in 46 CFR 8.100.

III. Discussion of Comments

We received four letters commenting on the notice of proposed rulemaking published May 22, 2007. 72 FR 28650. The commenters supported the Alternate Compliance Program (ACP) and recommended the Coast Guard expand the program further to the U.S. tank barge industry, the Great Lakes shipping fleet, offshore supply vessels, and other domestic vessels that receive classification and loadline certificates.

The Coast Guard appreciates these comments. The ACP is one of many ways the Coast Guard partners with our industry stakeholders to make the best use of our combined resources, achieve a balance between industry and government interests, and improve opportunities for the U.S. maritime community to be competitive in the global marketplace. The Coast Guard has opted not to delegate authority to implement our regulations on domestic vessels.

The owners of domestic vessels may apply for enrollment in other, similar programs, such as the Streamlined Inspection Program (SIP) described in 46 CFR part 8, subpart E. In the SIP, the vessel owner and the Coast Guard work together to develop a Vessel Action Plan (VAP) that prescribes the procedures for maintenance, examination, and inspection of a vessel enrolled in the SIP. Under the SIP, owners of domestic vessels earn, in a manner similar to the ACP, more autonomy, flexibility, and responsibility for their vessels and operations under Coast Guard oversight. We made no changes from the proposed rule based on these comments.

IV. Discussion of Final Rule

This final rule amends 46 CFR 2.01–25(a)(1) and (a)(2) to:

- List all SOLAS certificates required to be maintained aboard ships, including the High-Speed Craft Safety Certificate; and

- Update the lists of SOLAS certificates that the Coast Guard issues and that can be issued by an authorized classification society on the Coast Guard's behalf.

In the proposed regulatory text of the May 2007 NPRM, we omitted the HSC Safety certificate from the list of IMO certificates the Coast Guard would issue, but we did reference such an update in the preamble of the NPRM (72 FR 28651). Therefore, in this final rule we added a paragraph (ix) to § 2.01–25(a)(2) to include HSC Safety in the list of certificates issued by the Coast Guard.

In § 2.01–25(a)(3), we changed the phrase “American Bureau of Shipping” to “authorized classification society.”

In § 8.320(b), we added the following IMO certificates to the list of those that can be issued by an authorized classification society:

- Passenger Ship Safety Certificate, and
- High-Speed Craft Safety Certificate.

Also, in § 8.420(c), we added to the list of conditions for eligibility to participate in the ACP, a requirement that a classification society must have been delegated issuing authority for the Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, International Load Line Certificate, International Tonnage Certificate, and International Oil Pollution Prevention Certificate.

Finally, in new § 189.15–5, we expand the ACP to include Subchapter U “Oceanographic Research Vessels.”

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will not impose mandatory costs on the public because it enables voluntary alternatives to inspections by Coast Guard personnel. We anticipate that vessel owners and operators will realize potential cost savings due to the expansion of the ACP. In this rule, we add to the delegation of certain inspections (and the resulting issuance of certain certificates) to classification societies that potentially leads to a

reduction of time and resources for plan review and the vessel inspection process.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities and we requested public comments on this certification. We received no comments on this certification and adopt it as final.

This rule does not change any requirements in the regulations. It simply updates and expands an existing voluntary program for alternate compliance with Coast Guard regulations. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so they can better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. William Peters, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–372–1731. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in lieu of government-unique standards in their regulatory activities unless the agency determines use of these standards would be inconsistent with law or are otherwise impractical. Agencies not using voluntary consensus standards in lieu of government-unique standards must provide Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standard bodies.

This rule does not use voluntary consensus standards as there are none that meet the objectives of this rulemaking, and, therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(b), (d), and (e) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the delegation of authority, the inspection and documentation of vessels, and equipment approval and carriage requirements. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects**46 CFR Part 2**

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 8

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 2, 8, and 189 as follows:

PART 2—VESSEL INSPECTIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. Note prec. 1).

■ 2. Amend § 2.01–25 as follows:

■ a. Add a new paragraph (a)(1)(ix) to read as set forth below;

■ b. Add a new paragraph (a)(2)(ix) to read as set forth below;

■ c. In paragraph (a)(3), remove the words “the American Bureau of Shipping may issue the Cargo Ship Safety Construction Certificate to cargo and tankships which it classes.” and add, in their place, the words “an authorized classification society may issue international convention certificates as permitted under part 8, subpart C, of this title.” and;

■ d. In paragraph (b)(1), after the word “Cargoes,” remove the word “and”, and after the words “Passenger Vessels”, add the words “and Subchapter U (Oceanographic Research Vessels),”.

§ 2.01–25 International Convention for the Safety of Life at Sea, 1974.

(a) * * *

(1) * * *

(ix) High-Speed Craft Safety Certificate

(2) * * *

(ix) High-Speed Craft Safety Certificate

* * * * *

PART 8—VESSEL INSPECTION ALTERNATIVES

■ 3. The authority citation for part 8 continues to read as follows:

Authority: 46 U.S.C. 3103, 3306, 3316, 3703; Department of Homeland Security Delegation No. 0170.1.

■ 4. Amend § 8.320 as follows:

■ a. In paragraph (b)(8), remove the word “and”;

■ b. In paragraph (b)(9), remove the period and add, in its place, a semicolon; and

■ c. Add new paragraphs (b)(10) and (b)(11) to read as follows:

§ 8.320 Classification society authorization to issue international certificates.

* * * * *

(b) * * *

(10) SOLAS Passenger Ship Safety Certificate; and

(11) High-Speed Craft Safety Certificate.

* * * * *

■ 5. In § 8.420, revise paragraph (c) to read as follows:

§ 8.420 Classification society authorization to participate in the Alternate Compliance Program.

* * * * *

(c) A recognized classification society:

(1) Will be eligible to receive authorization to participate in the ACP only after the Coast Guard has delegated to it the authority to issue the following certificates:

(i) International Load Line Certificate;

(ii) International Tonnage Certificate;

(iii) Cargo Ship Safety Construction Certificate;

(iv) Cargo Ship Safety Equipment Certificate; and

(v) International Oil Pollution Prevention Certificate; and

(2) Must have performed a delegated function related to general vessel safety assessment, as defined in § 8.100 of this part, for a two-year period.

* * * * *

Subchapter U—Oceanographic Research Vessels**PART 189—INSPECTION AND CERTIFICATION**

■ 6. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 7. Add new § 189.15–5 to read as follows:

§ 189.15–5 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of 46 CFR part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (CG–521), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202) 372–1371; or fax (202) 372–1925. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: April 27, 2009.

Howard L. Hime,

U.S. Coast Guard, Acting Director of Commercial Regulations and Standards.

[FR Doc. E9–10113 Filed 5–1–09; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 09–837; MB Docket No. 07–175; RM–11380]

Radio Broadcasting Service; Cuba, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a petition for rule making filed by KM Communications, Inc. (“Petitioner”) to substitute Channel 252A for vacant Channel 292 at Cuba, Illinois. Petitioner proposes the foregoing channel substitution to accommodate its construction permit application to substitute Channel 291A for Channel 252A at Abington. Channel 292A can be allotted at Cuba, Illinois, in compliance with the Commission’s technical engineering requirements, at 40–25–50 North Latitude and 90–14–05 West Longitude with a site restriction of 7.9 kilometers (4.9 miles) southwest of Cuba.

DATES: Effective June 1, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard B. Gorman, Media Bureau, (202) 418–2187.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 07–175, adopted April 15, 2009, and released April 17, 2009. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 292A and by adding Channel 252A at Cuba.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–10201 Filed 5–1–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–832; MB Docket No. 07–125; RM–11375, RM–11410]

Radio Broadcasting Services; Worthington, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants the counterproposal filed by L. Dean Spencer requesting the allotment of Channel 231A at Worthington, Indiana, as the community's first local aural transmission service. This counterproposal was filed in response to the Notice of Proposed Rule Making issued at the request of Bruce Quinn, requesting the allotment of Channel 231A at Oolitic, Indiana, as the community's second local aural transmission service. The coordinates for Channel 231A at Worthington, Indiana, are 39–00–31 NL and 86–55–05 WL. There is a site restriction of 14 kilometers (8.7 miles) south of the community. Proposed Channel 231A is short-spaced to the proposed site of Channel 230B1 at Clinton, Indiana, in MB Docket 05–67, which is pending on reconsideration. Accordingly, the grant of this allotment is subject to the outcome of the petition for reconsideration in MB Docket No. 05–67.

DATES: *Effective Date:* June 1, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 07–125, adopted April 15, 2009, and released April 17, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This matter was initiated by a *Notice of Proposed Rule Making*, 73 FR 57268 (October 2, 2008). This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 800–378–3160 or <http://www.BCPIWEB.com>. This document

does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Worthington, Channel 231A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–10198 Filed 5–1–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–835; MB Docket No. 08–196, RM–11487]

Radio Broadcasting Services; Marquez, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making issued at the request of Charles Crawford, proposing the allotment of Channel 296A at Marquez, Texas, as its first local service. Channel 296A at Marquez can be allotted, consistent with the minimum distance separation requirements of the Commission's Rules with the imposition of a site restriction located 13.6 kilometers (8.4 miles) west of the

community at reference coordinates 31–14–20 NL and 96–23–45 WL.

DATES: Effective June 1, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 08–196, adopted April 15, 2009, and released April 17, 2009. The *Notice of Proposed Rule Making* proposed the allotment of Channel 296A at Marquez, Texas. See 73 FR 66588, published November 10, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Marquez, Channel 296A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–10200 Filed 5–1–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 402

RIN 1018–AW73

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[0808011023–9788–04]

RIN 0648–AX87

Interagency Cooperation Under the Endangered Species Act

AGENCIES: Fish and Wildlife Service, Department of the Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: With this final rule, the Department of the Interior and the Department of Commerce amend regulations governing interagency cooperation under the Endangered Species Act of 1973, as amended (ESA). In accordance with the statutory authority set forth in the 2009 Omnibus Appropriations Act (Pub. L. 111–8), this rule implements the regulations that were in effect immediately before the effective date of the regulation issued on December 16, 2008, entitled “Interagency Cooperation Under the Endangered Species Act.”

DATES: *Effective Date:* This rule is effective May 4, 2009. Submit any comments on potential improvements to our regulations on interagency consultation under the ESA by August 3, 2009.

ADDRESSES: You may submit comments requested in this rule by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018–AT50; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mailed or faxed comments. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT:

Office of the Assistant Secretary for Fish and Wildlife and Parks, 1849 C Street, NW., Washington, DC 20240; telephone: 202–208–3928; or James H. Lecky, Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; telephone: 301–713–2332.

SUPPLEMENTARY INFORMATION:

Background

In 1986, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the “Services”) issued regulations to guide and govern the consultation process required under section 7 of the Endangered Species Act (ESA). See 51 FR 19926 (June 3, 1986) (amending 50 CFR Part 402) (“1986 regulations”). These regulations defined key terms and described the consultation process required to be followed by Federal action agencies when they take an action that “may affect” listed species or critical habitat. On December 16, 2008, the Departments of the Interior and Commerce issued joint regulations that modified the 1986 regulations. The primary purposes of these revisions were to: (1) Redefine several definitions that are central to the consultation process; (2) narrow the circumstances when Federal agencies are required to consult with the Services; and (3) establish timeframes for the informal consultation process. These regulations became effective January 15, 2009. See 73 FR 76272 (Dec. 16, 2008) (amending 50 CFR part 402) (“new regulations”).

On March 3, 2009, President Obama issued a memorandum to the heads of the executive departments and agencies. In that memorandum, the President noted that the “Federal Government has long required a process of broad interagency consultation” in order to ensure “the application of scientific and technical expertise to decisions that may affect” listed species. The President noted that the new regulations modified these requirements. But, as the President observed, the new regulations afford discretion to Federal action agencies to continue the previous practice of consulting with, and obtaining the written concurrence of, the Services. The President requested that the Secretaries of the Interior and Commerce review the new regulations

and determine whether to undertake new rulemaking procedures. Further, the President requested that the heads of all agencies exercise their discretion to follow the “prior longstanding” consultation and concurrence practices.

Per the President’s request, the Departments have reviewed the new regulations and evaluated whether to undertake new rulemaking regarding the section 7 consultation processes and standards. Congress enacted special authority for the Secretary of the Interior and the Secretary of Commerce that authorized us to withdraw these new regulations and reinstate the pre-existing ESA section 7 consultation regulations without following the notice and comment procedures of the Administrative Procedure Act or other ordinarily applicable procedures.

We believe that it is appropriate to withdraw the new regulations and return to the “status quo ante” pending a comprehensive review of the ESA section 7 consultation regulations. Recognizing the widespread public concern about the process in the promulgation of the new regulations, the Departments agree that a thoughtful, in-depth, and measured review would be beneficial before a determination is made regarding potential changes to the section 7 consultation regulations. The section 7 consultation process is important for the conservation of species and critical habitat and involves complex and highly technical issues; the input from career conservation biologists who have experience with the section 7 consultations and who can provide scientific and technical expertise should, of course, be a key part of the process. In addition, any rulemaking process should be accorded a sufficient period of time to provide for careful, meaningful involvement of the affected public and to ensure consistency with the purposes of the ESA. This thorough review will allow the Departments to identify a range of options and implement improvements, if appropriate.

In light of the President’s memorandum, withdrawing the regulations will not disadvantage federal agencies or applicants for federal permits and licenses, who already have been requested to use the consultation procedures that were in effect prior to the new regulations. Returning to the status quo ante will allow time for a thorough and thoughtful review while still ensuring that listed species and critical habitat are not impacted negatively. To begin this process, as described below, we are requesting comments from the public to help us identify potential options and

improvements to the section 7 regulations that may be appropriate.

Based on the authority provided by section 429(a)(1) and (2) of the 2009 Omnibus Appropriations Act (Pub. L. 111–8), we are hereby withdrawing the new regulations (the December 16, 2008, final rule). Specifically, section 429 authorizes us to withdraw the new regulations “without regard to any provision of statute or regulation that establishes a requirement for such withdrawal.” For the reasons discussed above, we believe withdrawing the regulations immediately is the best course of action for the protection of listed species and critical habitat. We, therefore, are not requesting comments on the withdrawal of the new regulations. As discussed, below, however, we are requesting comments from the public as to any changes that potentially may be appropriate to the section 7 regulations. Any further changes made to the section 7 regulations will be proposed with notice and comment consistent with the Administrative Procedure Act.

Further, as directed by section 429(a)(2)(b), we are implementing the section 7 regulations (50 CFR Part 402) as they stood before the effective date of the December 16, 2008, final rule, concurrent with withdrawal of the new regulations, in order to ensure there is no regulatory void and thus to protect the conservation of the species and their habitat as we review the appropriateness of any regulatory changes. By this action, the regulations at 50 CFR part 402 are returned to the version that was in effect on January 14, 2009. This withdrawal does not affect any actions taken prior to the effective date of this rule.

Public Comments

We are requesting the public’s input regarding potential changes to the section 7 consultation regulations. We welcome all comments related to ways to improve the section 7 regulations while retaining the purposes and policies of the ESA. By way of example, we solicit comments on: The applicability of section 7, the definitions of “jeopardy” and “adverse modification”, the definition of “effects of the action”, the definition of “action area”, the appropriate standard of causation, the informal consultation process, methods to streamline both formal and informal consultation, flexibility for “low effect” consultations, formal consultation requirements, programmatic consultations, consideration of effects related to global climate change, incidental take statements, and reinitiation standards.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Classification

Under Public Law 111–8, this action is exempt from any provision of statute or regulation establishing a requirement that would otherwise apply.

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Dated: April 27, 2009.

Ken Salazar,
Secretary of the Interior.

Dated: April 27, 2009.

Gary Locke,
Secretary of Commerce.

■ For the reasons set forth in the preamble, the Departments amend part 402, title 50 of the Code of Federal Regulations as follows:

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531, *et seq.*

■ 2. In § 402.02 revise the definitions for “Biological assessment,” “Cumulative effects,” and “Effects of the action” to read as follows:

§ 402.02 Definitions.

* * * * *

Biological assessment refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.

* * * * *

Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

* * * * *

Effects of the action refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other

activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

* * * * *

■ 3. Revise § 402.03 to read as follows:

§ 402.03 Applicability.

Section 7 and the requirements of this part apply to all actions in which there is discretionary Federal involvement or control.

■ 4. Revise § 402.13 to read as follows:

§ 402.13 Informal consultation.

(a) Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required. If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.

(b) During informal consultation, the Service may suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

■ 5. In § 402.14, revise paragraphs (a) and (b)(1) to read as follows:

§ 402.14 Formal consultation.

(a) Requirement for formal consultation. Each Federal agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except

as noted in paragraph (b) of this section. The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request.

(b) *Exceptions.* (1) A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment under § 402.12 or as a result of informal consultation with the Service under § 402.13, the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.

* * * * *

[FR Doc. E9-10203 Filed 5-1-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206144-9697-02]

RIN 0648-AX49

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2009 Atlantic Bluefish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final specifications for the 2009 Atlantic bluefish fishery.

SUMMARY: NMFS issues final specifications for the 2009 Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The intent of these specifications is to establish the allowable 2009 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Effective June 3, 2009, through December 31, 2009.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room

2115, Federal Building, 300 South Street, Dover, DE 19901 6790. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930 2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP are prepared by the Mid-Atlantic Fishery Management Council (Council) and appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for bluefish (*Pomatomus saltatrix*) is U.S. waters of the western Atlantic Ocean.

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and recreational harvest limit (RHL). A research set aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors. The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator (RA). This FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission); therefore, the Commission meets during

the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS publishes final specifications in the **Federal Register**.

In July 2008, the Monitoring Committee and SSC met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2009. Based on the updated 2007 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: $B_{2007} = 339.2$ million lb (153,843 mt) is greater than the minimum biomass threshold, $\frac{1}{2} B_{MSY} = 162$ million lb (73,526 mt), and is actually above B_{MSY} . The bluefish stock, therefore, appears to be fully rebuilt. Estimates of fishing mortality have declined from 0.41 in 1991 to 0.15 in 2007. The new model results also conclude that the Atlantic stock of bluefish is not experiencing overfishing; i.e., the most recent F ($F_{2007} = 0.15$) is less than the maximum F overfishing threshold specified by SARC-41 ($F_{MSY} = 0.19$). Detailed background information regarding the stock assessment process for bluefish and the development of the 2009 specifications for this fishery was provided in the proposed specifications (74 FR 9072, March 2, 2009), and is not repeated here. In August 2008, the Council approved the SSC and Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures.

Final Specifications

2009 TAL

The FMP specifies that the bluefish stock is to be rebuilt to B_{MSY} over a 9-year period (i.e., by the year 2010). The FMP requires the Council to recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the TAL that can be harvested during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota and a RHL. The FMP rebuilding program requires the TAC for any given year to be set based either on the target F resulting from the stock rebuilding

schedule specified in the FMP (0.31 for 2009), or the F estimated in the most recent fishing year ($F_{2007} = 0.15$), whichever is lower. Therefore, the 2009 recommendation is based on an estimated F of 0.15. An overall TAC of 34.081 million lb (15,459 mt) was recommended as the coast-wide TAC by the Council at its August 2008 meeting to achieve the target F , ($F = 0.15$) in 2009, and to ensure that the bluefish stock continues to remain above the long-term biomass target, B_{MSY} .

The TAL for 2009 is derived by subtracting an estimate of discards of 4.725 million lb (2,143 mt), the average discard level from 2005–2007, from the TAC. After subtracting estimated discards, the 2009 TAL would be approximately 4 percent greater than the 2008 TAL, or 29.356 million lb (13,316 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2009 would be 4.991 million lb (2,227 mt), and the RHL would be 24.366 million lb (11,052 mt) in 2009. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the allocation of TAL between the commercial and recreational sectors, and the proportional adjustments to account for the recommended bluefish RSA Quota.

Final Commercial Quota, RHL, and RSA quota

The FMP stipulates that, in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), the commercial quota may be increased up to 10.500 million lb (4,763 mt) as long as the recreational fishery is not projected to land more than 83 percent of the TAL in the upcoming fishing year, and the combined projected recreational landings and commercial quota would not exceed the TAL. At the Monitoring Committee meeting in July 2008, Council staff estimated projected recreational landings for the 2009 fishing year by using simple linear regression of the recent (2001–2007) temporal trends in recreational landings. At that time, recreational landings were projected to reach 24.719 million lb (11,212 mt) in 2009. Therefore, projected 2009 recreational landings were slightly greater than the initial 2009 RHL. As such, a transfer of quota to the commercial sector could not occur based on those data. Any amount of transfer would likely have caused the TAL to be exceeded. This option, therefore, represented the preferred alternative recommended by the Council in its draft specifications document.

However, the Council also recommended that, if later projections based on more complete data indicated that recreational harvest would be below 83 percent of the TAL, the difference be transferred to the commercial sector in the final specifications. NMFS Northeast Regional Office staff recently updated the recreational harvest projection using Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 5 of 2008, and estimated the recreational harvest to be approximately 19.528 million lb (8,858 mt), or 67 percent of the TAL. Following the Council's recommendation, this would allow for a transfer to the commercial fishery of 4.838 million lb (2,194 mt), increasing the commercial quota from 4.991 million lb (2,227 mt) to 9.828 million lb (4,458 mt). This commercial quota is 27 percent greater than the 2008 quota, and 86 percent greater than actual 2008 commercial landings.

A request for proposals was published to solicit research proposals to utilize RSA in 2008 based on research priorities identified by the Council (February 8, 2008; 73 FR 7528). One research project that would utilize bluefish RSA has been preliminarily approved by the RA and forwarded to the NOAA Grants Office. Therefore, a 97,750–lb (44,339–kg) RSA quota is approved for use by this project, or other potential research projects, during 2009. This final rule does not represent NOAA's approval of any RSA-related grant award, which will be included in a separate action. Consistent with the allocation of the bluefish RSA, the final commercial quota for 2009 is 9,730,601 lb (4,414 mt), the final RHL is 19,528,060 lb (8,858 mt), and the RSA quota is 97,750 lb (44,339 kg).

Recreational Possession Limit

NMFS has approved the Council's recommendation to maintain the current recreational possession limit of 15 fish per person to achieve the RHL.

Final State Commercial Allocations

The final state commercial allocations for the 2009 commercial quota are shown in Table 1, based on the percentages specified in the FMP. In accordance with the regulations at § 648.160(e)(2), NMFS shall deduct any overages of the commercial quota landed in any state from that state's annual quota for the following year. Updated landings information for FY 2008 indicate a bluefish quota overage for New York in the amount of 34,149 lb (15,490 kg). This final rule adjusts New York's 2009 bluefish quota downward by this amount, to 976,384 lb

(442,880 kg), to account for this overage. The table below includes the adjustment for New York's 2008 quota overage.

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2009 (INCLUDING RSA DEDUCTIONS).

State	Percent Share	2009 Commercial Quota (lb)	2009 Commercial Quota (kg)
ME	0.6685	65,049	29,506
NH	0.4145	40,333	18,295
MA	6.7167	653,575	296,462
RI	6.8081	662,469	300,496
CT	1.2663	123,219	55,892
NY	10.3851	976,384	442,888
NJ	14.8162	1,441,702	653,956
DE	1.8782	182,760	82,900
MD	3.0018	292,093	132,493
VA	11.8795	1,155,945	524,337
NC	32.0608	3,119,709	1,415,100
SC	0.0352	3,425	1,554
GA	0.0095	924	419
FL	10.0597	978,869	444,015
Total	100.0001	9,696,457	4,398,313

Comments and Responses

The public comment period on the proposed rule ended on March 17, 2009, with three comments received.

Comment 1: One commenter suggested that the bluefish quotas should be reduced by 50 percent, based on the notion that commercial fisheries are causing bluefish, and other species, to become extinct.

Response: The commenter gave no specific rationale for why the quotas should be reduced in the manner suggested, and there is no known scientific basis for the commenter's suggestion that bluefish are at risk of extinction. The reasons presented by the Council and NMFS for recommending the final 2009 bluefish specifications are based on the best scientific information available, and are discussed in the preambles to both the proposed and final rules. Bluefish are not considered overfished or subject to overfishing, and biomass appears to be at its highest level in 20 years. Sufficient analysis and scientific justification for NMFS's action in this final rule are contained within the supporting documents.

Comment 2: Two commenters were supportive of the proposed specifications and increased commercial quotas. They further agreed, based on personal observations, that the bluefish resource appears to be healthy.

Response: As stated above, NMFS used the best scientific information available, and selected specifications for the bluefish fishery that are consistent with the FMP and the recommendations of the Council. The 2009 commercial bluefish quotas implemented through this final rule will allow for increased fishing opportunities compared to 2008, while maintaining the conservation objectives of the FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under E.O. 12866.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the Council (see ADDRESSES).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for these specifications are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Three comments were submitted on the proposed rule, but none were specific to the IRFA or the economic effects of the rule. NMFS has responded to the comments in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

Description and Estimated of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines small businesses in the commercial fishing and recreational fishing sectors as firms with receipts (gross revenues) of up to \$4.0 million and \$6.5 million, respectively. No large entities participate in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available and individual vessel profitability cannot be determined directly. Therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector were defined using two sets of data. First, the Northeast dealer reports were used to identify any vessel that reported having landed 1 lb (0.45 kg) or more of bluefish during calendar year 2007 (the last year for which there are complete data). These dealer reports identified 709 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 856 vessels¹ that landed bluefish in North Carolina, and 586 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2007.

In addition, it was estimated that, in recent years, approximately 2,063 party/charter vessels may have been active and/or caught bluefish. All of these vessels are considered small entities under the RFA, having gross receipts of less than \$5 million annually. Since the recreational possession limit will remain at 15 fish per person, there should be no impact on demand for party/charter vessel fishing, and, therefore, no impact on revenues earned by party/charter vessels.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

¹ Some of these vessels were identified in the Northeast dealer data; therefore, double counting is possible.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The commercial quota contained in this final rule is 27 percent higher than the 2008 commercial quota, and 86 percent higher than actual 2008 commercial bluefish landings. All affected states will receive increases in their individual commercial quota allocations in comparison to their respective 2008 individual state allocations, which may result in positive economic impacts for commercial bluefish fishery participants.

The RHL contained in this final rule is approximately 4 percent lower than the RHL in 2008. The small reduction in RHL is a reflection of a declining trend in recreational bluefish harvest in recent years. Since the 2009 RHL is set equal to the total projected recreational bluefish harvest for 2009, it does not constrain recreational bluefish harvest

below a level that the fishery is anticipated to achieve. Furthermore, the possession limit for bluefish remains at 15 fish per person. Therefore, no negative economic impacts on the recreational fishery are anticipated.

The impacts on revenues of the proposed RSA were analyzed; the social and economic impacts are minimal. Assuming that the full RSA of 97,750 lb (44,339 kg) is landed and sold to support the proposed research project (a supplemental finfish survey in the Mid-Atlantic), then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments. In conclusion, because the 2009 commercial quota being implemented in this final rule is greater than the 2008 commercial quota, the 2009 RHL is consistent with recent trends in recreational landings, and the impacts of the RSA quota will be minimal, no negative economic impacts are expected relative to the status quo.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of

1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic bluefish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.nero.noaa.gov>.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 27, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

[FR Doc. E9-10170 Filed 5-1-09; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 84

Monday, May 4, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991-AB77

Assistance Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Department of Energy (DOE) published on May 16, 2008, a proposed rule concerning its financial assistance regulation. That proposed rule included a recodification of 10 CFR part 600. However, DOE inadvertently omitted one phrase from the existing part 600. This action will afford interested members of the public the opportunity to comment on the continued inclusion of this phrase in DOE's financial assistance regulations.

DATES: Comments may be submitted on or before May 19, 2009.

ADDRESSES: Comments may be submitted online at <http://www.regulations.gov>. Comments may also be submitted by e-mail to jacqueline.kniskern@hq.doe.gov. Comments may be mailed to: Jacqueline Kniskern, Procurement Policy Analyst, MA-61 Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Electronic submissions are encouraged.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Kniskern, Office of Procurement and Assistance Policy, U.S. Department of Energy, at 202-287-1342, or by e-mail at jacqueline.kniskern@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On May 16, 2008, DOE published in the **Federal Register** a notice of proposed rulemaking (NPR) to amend its assistance regulations in 10 CFR part 600. (73 FR 28385) The notice proposed to amend part 600 consistent with The Energy Policy Act of 2005, to further implement the Federal Financial Assistance Management Improvement Act of 1999, and to make technical

corrections. The changes to part 600 are intended to simplify procedures for soliciting, awarding, and administering DOE's financial assistance agreements. The comment period for the proposed rule closed on July 15, 2008. DOE received no comments.

The May 16 NPR set out the portions of part 600 that were to be amended including the entirety of 10 CFR 600.6. As it appeared in the NPR, the text of § 600.6(c) omitted the phrase "or technology investment agreement" from the introductory language. (73 FR 28389) That phrase appears in the current version of 10 CFR 600.6(c) and DOE did not intend to propose that it be removed from the assistance regulation.

DOE intends to include the phrase "or technology investment agreement" in § 600.6(c) of a final rule. Given that neither the removal nor the inclusion of the phrase was mentioned in the May 16 NPR and recognizing that the May 16 version of § 600.6 omitted the phrase "or technology investment agreement" DOE is providing a fifteen day period for interested parties to submit comments. This opportunity to comment is limited to submissions addressing the exclusion or inclusion of the phrase "or technology investment agreement" in a final version of the introductory language of § 600.6(c), as that phrase appears in the current version of 10 CFR 600.6(c).

Issued in Washington, DC on April 24, 2009.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, Office of Management, National Nuclear Security Administration.

[FR Doc. E9-10158 Filed 5-1-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM398; Notice No. 25-09-01-SC]

Special Conditions: Model C-27J Airplane; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Alenia Model C-27J airplane. This airplane has novel or unusual design features when compared to the state of technology described in the airworthiness standards for transport-category airplanes. These design features include electronic flight-control systems. These special conditions pertain to the effects of novel or unusual design features such as effects on the structural performance of the airplane. We have issued additional special conditions for other novel or unusual design features of the C-27J.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by June 3, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM398, 1601 Lind Avenue, SW., Renton, Washington 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM398. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW.,

Renton, Washington 98057-3356; telephone (425) 227-1357, facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On March 27, 2006, the European Aviation Safety Agency (EASA) forwarded to the FAA an application from Alenia Aeronautica of Torino, Italy, for U.S. type certification of a twin-engine commercial transport designated as the Model C-27J. The C-27J is a twin-turbopropeller, cargo-transport aircraft with a maximum takeoff weight of 30,500 kilograms.

Type Certification Basis

Under the provisions of Section 21.17 of Title 14 Code of Federal Regulation (14 CFR) and the bilateral agreement between the U.S. and Italy, Alenia Aeronautica must show that the C-27J meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-87. Alenia also elects to comply with Amendment 25-122, effective September 5, 2007, for 14 CFR 25.1317.

If the Administrator finds that existing airworthiness regulations do not adequately or appropriately address

safety standards for the C-27J due to a novel or unusual design feature, we prescribe special conditions under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the C-27J must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, under §§ 11.19 and 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions also apply to the other model under § 21.101.

Novel or Unusual Design Features

The C-27J incorporates several novel or unusual design features. Because of rapid improvements in airplane technology, the existing airworthiness regulations do not adequately or appropriately address safety standards for these design features. This proposed special condition for the C-27J contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

This special condition was derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (JAA, now replaced by the European Aviation Safety Agency (EASA)), and industry. From the initial proposal, the JAA proposed this special condition in Notice of Proposed Amendment (NPA) 25C-199. When Ente Nazionale per l'Aviazione Civile (ENAC) certified the C-27J they applied NPA 25C-199, issued July 3, 1997.

Discussion

The Alenia C-27J is equipped with systems that affect the airplane's structural performance, either directly or as a result of failure or malfunction. That is, the airplane's systems affect how it responds in maneuver and gust conditions, and thereby affect its structural capability. These systems may also affect the aeroelastic stability of the airplane. Such systems represent a

novel and unusual feature when compared to the technology described in the current airworthiness standards. A special condition is needed to require consideration of the effects of systems on the structural capability and aeroelastic stability of the airplane, in both the normal and the failed states.

This special condition requires that the airplane meet the structural requirements of subparts C and D of 14 CFR part 25 when the airplane systems are fully operative. The special condition also requires that the airplane meet these requirements taking into consideration failure conditions. In some cases, reduced margins are allowed for failure conditions based on system reliability.

Applicability

As discussed above, these proposed special conditions are applicable to the C-27J. Should Alenia apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions apply to that model as well under the provisions of Sec. 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Alenia C-27J. It is not a rule of general applicability, and it affects only the applicant that applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Administrator of the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type-certification basis for the C-27J.

1. General

(a) The C-27J is equipped with systems that affect the airplane's structural performance either directly or as a result of failure or malfunction. The influence of these systems and their failure conditions must be taken into account when showing compliance with requirements of subparts C and D of part 25 of Title 14 of the Code of Federal Regulations (CFR). The following criteria must be used for showing compliance with this proposed special condition for airplanes equipped with

flight control systems, autopilots, stability-augmentation systems, load-alleviation systems, flutter-control systems, fuel-management systems, and other systems that either directly, or as a result of failure or malfunction, affect structural performance. If this proposed special condition is used for other systems, it may be necessary to adapt the criteria to the specific system.

(b) The criteria defined here address only the direct structural consequences of the system responses and performances, and cannot be considered in isolation, but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are only applicable to structure the failure of which could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements, when operating in the system-degraded or inoperative mode, are not provided in this special condition.

(c) Depending upon the specific characteristics of the airplane, additional studies may be required, that go beyond the criteria provided in this special condition, to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions, for an airplane equipped with a load-alleviation system.

(d) The following definitions are applicable to this special condition.

Structural performance: Capability of the airplane to meet the structural requirements of 14 CFR part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence, and that are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition are the same as those used in § 25.1309.

Failure condition: The term “failure condition” here is the same as that used in § 25.1309. However, this appendix applies only to system-failure conditions that affect the structural performance of the airplane (e.g., system-failure conditions that induce loads, change the response of the airplane to variables such as gusts or pilot actions, or reduce flutter margins).

2. Effects of Systems on Structures

(a) **General.** The following criteria determine the influence of a system and its failure conditions on the airplane structure.

(b) **System fully operative.** With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in Subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the

limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of 14 CFR part 25 (static strength, residual strength) using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

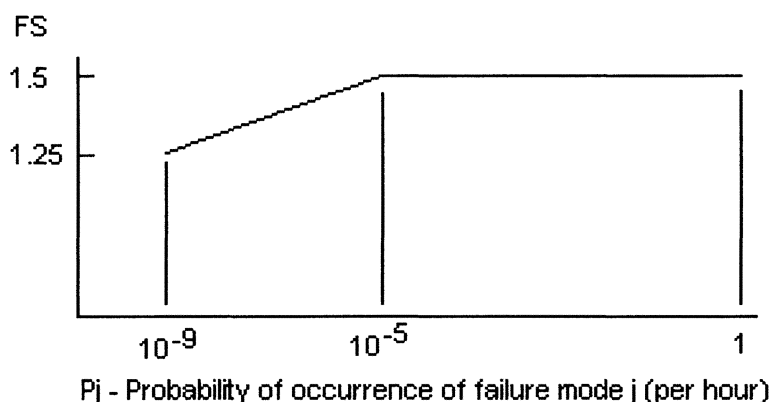
(3) The airplane must meet the aeroelastic-stability requirements of § 25.629.

(c) **System in the failure condition.** For any system-failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1-g level-flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static-strength substantiation, these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety (F.S.) is defined in Figure 1.

Figure 1
Factor of safety at the time of occurrence



(ii) For residual-strength substantiation, the airplane must be able

to withstand two-thirds of the ultimate loads defined in subparagraph (c)(1)(i).

(iii) Freedom from aeroelastic instability must be shown up to the

speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/M_C , freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system-failed state, and considering any appropriate

reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to V_C/M_C , or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit-symmetrical-maneuvering conditions specified in § 25.331 and in § 25.345.

(B) The limit-gust-and-turbulence conditions specified in § 25.341 and in § 25.345.

(C) The limit-rolling conditions specified in § 25.349, and the limit-

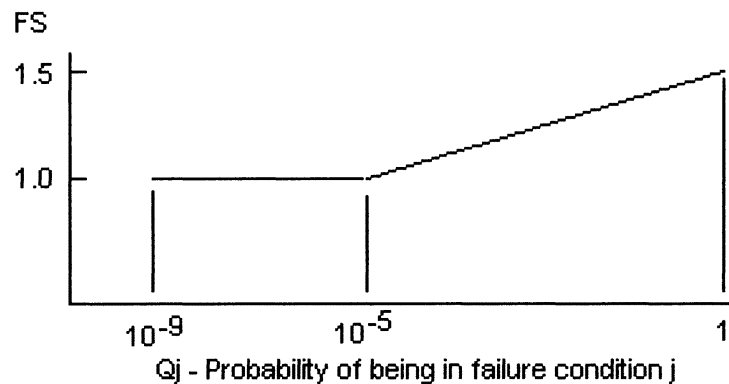
unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit-yaw-maneuvering conditions specified in § 25.351.

(E) The limit-ground-loading conditions specified in § 25.473 and § 25.491.

(ii) For static-strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight



$$Q_j = (T_j)(P_j)$$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be

applied to all limit-load conditions specified in Subpart C.

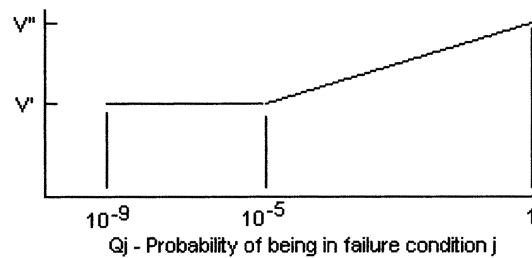
(iii) For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in subparagraph (c)(2)(ii).

(iv) If the loads induced by the failure condition have a significant effect on

fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter-clearance speeds V' and V'' may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed



V' = Clearance speed as defined by § 25.629(b)(2).

V'' = Clearance speed as defined by § 25.629(b)(1).

$$Q_j = (T_j)(P_j)$$

Where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V'' .

(vi) Freedom from aeroelastic instability must also be shown, up to V'

in Figure 3 above, for any probable system-failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other subparts of part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9} , criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Failure indications.* For system-failure detection and indication, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25, or that significantly reduce the reliability of the remaining system. To the extent practicable, these failures must be detected and annunciated to the flight crew before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification-maintenance requirements must be limited to components that are not readily detectable by normal warning systems, and where service history shows that inspections provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight, that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flight crew. Failure conditions that result in a factor of safety between the airplane strength and the loads of Subpart C below 1.25, or flutter margins below V'' , must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system-failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of § 25.302 must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Q_f as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations

must be such that the probability of being in this combined failure state, and then subsequently encountering limit-load conditions, is extremely improbable. No reduction in these safety margins is allowed if the subsequent system-failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on December 31, 2008.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-10164 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-27862; Directorate Identifier 2007-CE-036-AD]

RIN 2120-AA64

Airworthiness Directives; Thrush Aircraft, Inc. (Type Certificate Previously Held by Quality Aerospace, Inc. and Ayres Corporation) Model 600 S2D and S2R (S-2R) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2006-07-15, which applies to Thrush Aircraft, Inc. Model 600 S2D and S2R (S-2R) series airplanes (type certificate previously held by Quality Aerospace, Inc. and Ayres Corporation). AD 2006-07-15 currently requires repetitive inspections of the $\frac{1}{4}$ -inch and $\frac{5}{16}$ -inch bolt hole areas on the wing front lower spar caps for fatigue cracking; replacement or repair any wing front lower spar cap where fatigue cracks are found; and reporting of any fatigue cracks found to the FAA. AD 2006-07-15 also puts the affected airplanes into groups for compliance time and applicability purposes. Since we issued AD 2006-07-15, FAA analysis reveals that inspections are not detecting all existing cracks and shows the incidences of undetected cracks will increase as the airplanes age. Consequently, this proposed AD would retain the actions of AD 2006-07-15 and impose a life limit on the wing front lower spar caps that requires replacement of the wing front lower spar caps when the life limit is reached. This proposed AD would also change

the requirements and applicability of the groups discussed above and remove the ultrasonic inspection method. We are proposing this AD to prevent wing front lower spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing in flight.

DATES: We must receive comments on this proposed AD by July 6, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Thrush Aircraft, Inc., 300 Old Pretoria Road, P.O. Box 3149, Albany, Georgia 31706-3149. The service information is also available on the Internet at www.thrushaircraft.com.

For Further Information, Contact One of the Following:

—Cindy Lorenzen, Aerospace Engineer, ACE-115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6078; facsimile: (770) 703-6097; e-mail: cindy.lorenzen@faa.gov; or

—Keith Noles, Aerospace Engineer, ACE-117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6085; facsimile: (770) 703-6097; e-mail: gregory.noles@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2007-27862; Directorate Identifier 2007-CE-036-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all

comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

History of AD Actions

An accident in which the wing on a Thrush S2R series airplane separated from the airplane in flight prompted us to issue AD 97-13-11. The following presents the sequential AD history on this subject to date:

- AD 97-13-11, Amendment 39-10071 (62 FR 36978, July 10, 1997), required (until superseded by AD 97-17-03) inspecting certain areas of the wing front lower spar caps for fatigue cracks, replacing any wing front lower spar cap where fatigue cracks were found, and reporting any fatigue cracks to the FAA.
- AD 97-17-03, Amendment 39-10195 (62 FR 43926, August 18, 1997), superseded AD 97-13-11. AD 97-17-03 corrected a model designation and retained the actions of AD 97-13-11.
- AD 2000-11-16, Amendment 39-11764 (65 FR 36055, June 7, 2000), superseded AD 97-17-03. AD 2000-11-16 changed the inspections required in AD 97-17-03 to repetitive, added airplanes to the Applicability section, changed the initial compliance time for all airplanes, and arranged the affected airplanes into six groups based on usage and configuration.
- AD 2003-07-01, Amendment 39-13097 (68 FR 15653, April 1, 2003), superseded AD 2000-11-16. AD 2003-07-01 added airplanes manufactured with a similar design to the Applicability section and added an additional repair option.
- AD 2006-07-15, Amendment 39-14542 (71 FR 16691, April 4, 2006), superseded AD 2003-07-01. AD 2006-07-15 increased the inspection frequency of Groups 1, 2, 3, and 6 airplanes and lowered the initial inspection time of Group 2 airplanes based on analysis of crack report data compiled from the previous ADs.

Events That Initiated This Proposed AD

All of the ADs listed above required submitting reports to the FAA anytime a fatigue crack was found on a wing front lower spar cap. Recent analysis of the data from those reports and other historical and statistical data indicate the current inspections are not

completely addressing the unsafe condition.

Specifically, the data indicate a risk that some airplanes in the Thrush fleet may currently have undetected fatigue cracks in the steel spar cap using the existing inspection program. Airplanes with cracks in the wing front lower spar caps are unable to meet ultimate strength requirements, which could lead to a wing failure. As the incidences of cracking increase, which has occurred in the Thrush airplanes, the chance of an existing crack not being detected during an inspection increases.

FAA Analysis

The FAA used a risk-based probability analysis to determine the risk of fatigue cracks occurring in the wing front lower spar cap on Model 600 S2D and S2R (S-2R) series airplanes. This analysis indicates the risk to the pilot and the public is too great to allow the continuation of the repetitive inspections as the only method to ensure the safety of these airplanes. The actions in this proposed AD are necessary to assure the continued airworthiness of these airplanes.

We analyzed data obtained from reports of 117 fatigue cracks found on the wing front lower spar caps on these airplanes since 1997. The analysis of the crack reports led to our determination to consider imposing a life limit on the wing front lower spar caps. We have confidence in the accuracy of the reports submitted by the owner/operators, Airframe and Powerplant (A&P) mechanics, and Level 2 and 3 non-destructive inspectors. Anyone with documented evidence of owner/operators, inspectors, or A&P mechanics on behalf of the owner submitting inaccurate crack reports or not submitting crack reports to the FAA should send that evidence to their local FAA Flight Standards District Office.

We have a documented occurrence of a fatigue crack that went undetected for at least two inspection cycles. The crack grew until the wing front lower spar cap was completely severed, which is considered a failure even though the wing stayed attached to the airplane. The "big butterfly" plate and the lower splice plate, part numbers (P/Ns) 20211-09 and 20211-11 respectively, installed on this airplane as an optional modification helped keep the wing together; however, the plates are not designed to carry all of the possible flight loads in the event a spar cap is severed.

Installing stronger "big butterfly" plates is beneficial because it reduces stress in the wing front lower spar caps. The reduced stress slows the crack

growth rate in the spar cap. This slower crack growth rate in airplanes equipped with "big butterfly" plates allows for less frequent inspections. Even though P/Ns 20211-09 and 20211-11 reduce stress in the wing front lower spar caps and slow the crack growth rate, the plates will not handle all possible flight loads once the spar cap is severed. Any known cracks must still be repaired.

Thrush Aircraft, Inc. has developed Custom Kit No. CK-AG-41, Revision A, dated March 8, 2007. This kit includes parts and procedures for replacing both wing front lower spar caps with new wing front lower spar caps, P/Ns 20207-15 and 20207-16, new inboard spar webs and doublers, and new, thicker "big butterfly" plate and lower splice plate, P/Ns 94418-5 and 94418-7 respectively.

Airplanes that have Custom Kit No. CK-AG-41, Revision A, installed in its entirety will have lower stresses in the spar cap, which will delay the initiation of fatigue cracks and slow the fatigue crack growth rate allowing for less frequent inspections. A life limit would remain the same even after Custom Kit No. CK-AG-41, Revision A, is installed in its entirety. If additional fatigue testing and analysis is completed on this configuration in the future, a life limit may be adjusted.

Our analysis showed the wing front lower spar caps will all crack due to fatigue. In determining the maximum time allowed for life limits, we gave consideration to the following:

- Reliability of the significant amount of crack data on the Thrush fleet;
- Existence of the on-going inspection program for the wing front lower spar caps; and
- Allowance of credit for time the airplanes operated with lower horsepower radial engines and were later modified by installing a turbine engine, a higher horsepower radial engine, or larger hopper.

We could not consider the following when determining life limits:

- Individual airplanes operated at lower weights; and
- Individual airplanes operated at lower G loads.

To consider these factors, individual airplanes would need to have recorded data for every flight since the wings were installed showing the weight and recorded Gs throughout each flight, along with fatigue analysis and tests using this data.

In addition, we could not consider the effect of the following modifications when determining life limits:

- Kaplan splice blocks installed;
- "Big butterfly" plates and lower splice plates installed;

- Winglets installed; or
- Cold work process on the bolt holes performed.

We do not have service information to calculate the effect of these modifications, and accurate fatigue test data or fatigue analysis data supported by tests has not been provided to us for these configurations. If we receive accurate fatigue substantiation data for airplanes with these modifications, we may allow changes to life limits by an alternative method of compliance.

There is evidence of sharp, uneven edges on the spar cap bolt holes that resulted from the manufacturing process in Group 5 airplanes. Five fatigue cracks have been reported on Group 5 airplanes, and our analysis concludes fatigue cracks will occur on all these airplanes. Premature fatigue cracks begin when there is a crack starter, such as an uneven edge. At this time, there is no rework method to address the condition of these wing front lower spar caps with uneven bolt hole edges. Once the original wing front lower spar caps are replaced, a higher life limit for wing front lower spar caps without uneven bolt hole edges may be used.

Initial compliance times for replacement of the wing front lower spar caps would be based on risk analysis that allows for compliance scheduling. For any of the affected airplanes that may exceed any life limits, the compliance time range would be based on total hours time-in-service (TIS), which would address those high-usage airplanes first. Graduated compliance times would help alleviate grounding of airplanes due to the limited supply of wing front lower spar caps, while still addressing the increased risk for high-usage airplanes.

Long-Term Continued Operational Safety

Repeated loads and the resulting stresses in the metal lead to fatigue. Over time, these stresses cause the metal to wear out and cracks will form in these airplanes even when operated within the approved limitations and envelope. Higher stresses in the wing front lower spar cap, caused by pulling excessive Gs and/or operating over the design weight of the airplane, will accelerate metal fatigue. Metal will also fatigue more quickly when operated in a wet or corrosive environment, which exists when dispensing agricultural chemicals or dropping fire retardants or water.

Any type of inspection method may be affected by the reliability of the equipment used, the inspection procedure used, the environment in which the inspection is done, the

quality of the calibration reference standard used, and various human factors, such as the knowledge, skill, experience, and dexterity of the inspector. Because of all these variables, most inspection results, while very good, are not always 100-percent accurate. Over time, the probability of failing to detect a crack increases due to these variables, which increases the risk to the safety of these airplanes.

Studies of the factors leading to inspection inaccuracy and their effect on a variety of inspection methods, including magnetic particle inspections and eddy current inspections, have been done by the National Aeronautics and Space Administration (since 1973 for the Space Shuttle design), the United States Air Force, and the FAA. These studies show variability in inspection results that are inherent to any measurement process.

We received a report of cracks not being detected in the Thrush wing front lower spar cap using the ultrasonic method because of the configuration of the joint. Our records indicate that ultrasonic inspections are no longer being used in the field. This inspection method should be removed. If ultrasonic inspections are no longer allowed for these inspections, the availability of inspection facilities should not be affected because the two inspection facilities certified for ultrasonic inspections are also certified for eddy current inspections.

As wing front lower spar caps accumulate hours TIS beyond the time when cracks have been found on other products of the same type design, the likelihood of fatigue cracks occurring in these wing front lower spar caps increases. Many of the affected airplanes have wing front lower spar caps that have been in service well past the number of hours TIS when cracks have been appearing on wing front lower spar caps in other products of the same type design. FAA statistical analysis of the crack data indicates the risk of a wing failure occurring is becoming very high for these airplanes.

Reclassification of Airplane Groups

A recent review of the manufacturer's build record data shows some airplanes were placed in incorrect Groups and one airplane was inadvertently left out in the previous ADs. Our review shows that Model S2R-T34 airplanes, serial numbers (S/Ns) T34-147 through T34-167, were built with wing front lower spar caps identical to Group 2 airplanes; these airplanes should be reclassified from Group 1 to Group 2. Model S2R-G10 airplane, S/N G10-137, is currently included in Group 4 airplanes but was

built identical to Group 2; this airplane should be reclassified into Group 2. We inadvertently omitted Model S2R-T34 airplane, S/N T34-170, from AD 2006-07-15; that airplane should be included in Group 2. We inadvertently listed Model S2R-T34 airplane, S/N T34-225, in both Group 2 and Group 4 airplanes in AD 2006-07-15; it should be in Group 2 only. Model S2R-G1 airplane, S/Ns G1-107, G1-108, G1-109; Model S2R-G10 airplane, S/Ns G10-139 and G10-142; and Model S2R-T34 airplanes, S/Ns T34-236, T34-237, and T34-238, were built identical to Group 5; these airplanes should be in Group 5. No airplanes were built to the configuration previously identified as Group 4; Group 4 should be removed.

Relevant Service Information

The following service information was included in AD 2006-07-15 and will be included in this proposed AD:

- Ayres Corporation Service Bulletin No. SB-AG-39, dated September 17, 1996;
- Ayres Corporation Custom Kit No. CK-AG-29, dated December 23, 1997; and
- Quality Aerospace, Inc. Custom Kit No. CK-AG-30, dated December 6, 2001.

The new service information for this proposed AD is Thrush Aircraft, Inc. Custom Kit No. CK-AG-41, Revision A, dated March 8, 2007.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2006-07-15 with a new AD that would:

- Retain the actions of AD 2006-07-15;
- Add life limits for the wing front lower spar caps;
- Lower the initial and repetitive inspection times for Group 5 airplanes;
- Correct some airplane Group classifications;
- Add an airplane to the Applicability section; and
- Remove the use of ultrasonic inspection methods.

The initial compliance time for all airplanes would be at least an additional 500 hours TIS after the effective date of the proposed AD for replacement of the wing front lower spar caps. Calculated from actual flight hour data from 285 S2R series airplanes, 500 hours TIS equates to the average yearly operational

time. The proposed compliance schedule should give owner/operators enough time to schedule the replacement of the wing front lower spar caps.

Although not required in this proposed AD, we recommend installing "big butterfly" and lower splice plates,

P/Ns 20211-09 and P/N 20211-11, or Thrush Aircraft, Inc. Custom Kit No. CK-AG-41, Revision A, since they increase the strength of the wing beyond the minimum safety standards.

This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 808 airplanes in the U.S. registry, including those airplanes affected by AD 2006-07-15.

We estimate the following costs to do each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 work-hours × \$80 = \$240	\$525	\$765	\$618,120

We estimate the following costs to do cold work of bolt holes for the repair

that may be required based on the results of the proposed inspection. We

have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × \$80 = \$80	\$100	\$180

We estimate the following costs to do any reaming of outer holes to $\frac{5}{16}$ -inch diameter for the repair that may be

required based on the results of the proposed inspection. We have no way of

determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × \$80 = \$80	None	\$80

We estimate the following costs to do any drilling and reaming of outer holes and adding three holes to install a

Kaplan splice block for the repair that may be required based on the results of the proposed inspection. We have no

way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
65 work-hours × \$80 = \$5,200	\$4,400 for splice block and \$600 for hardware	\$10,200

We estimate the following costs to do the proposed optional installation of Thrush Aircraft, Inc. Custom Kit No. CK-AG-41, Revision A, dated March 8,

2007. This kit may be used to do any necessary wing front lower spar cap replacement that would be required based on the results of the proposed

inspection or that would be required based on reaching the proposed life limit:

Labor cost	Parts cost	Total cost per airplane
300 work-hours × \$80 = \$24,000	\$40,000	\$64,000

We estimate the following costs to do any necessary wing front lower spar cap replacement that would be required

based on the results of the proposed inspection or by the wing front lower

spar cap reaching the proposed life limit:

Labor cost per wing front lower spar cap	Parts cost per wing front lower spar cap	Total cost per airplane	Total cost on U.S. operators
200 work-hours × \$80 = \$16,000	\$8,000	Each spar cap replacement = \$24,000 Two spar caps per airplane = \$48,000.	\$38,784,000

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Initial Regulatory Flexibility Analysis

Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are seriously considered.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Unless the FAA can certify that a proposed rule will not have a significant economic impact on a substantial number of small entities, the FAA is required to prepare an initial regulatory flexibility analysis (IRFA) as described in § 603 of the RFA. Such an analysis must include (1) a description of the reasons for the agency’s action; (2) a statement regarding the objectives and legal basis for the proposed rule; (3) an estimate of the number of small entities that will be affected by the proposed rule; (4) a description of the projected recordkeeping, reporting, and other compliance costs; (5) a statement regarding any potential duplication, overlap, or conflict with all other relevant rules; and (6) a description of any significant alternatives that may minimize the significant economic impact of the proposed rule on small entities. Based on the following analysis, the FAA concludes that this proposed rule will have a significant economic impact on a substantial number of small entities.

Reasons Action by the FAA Is Being Considered

A series of ADs, beginning in 1997 and culminating in AD 2006–07–15 in 2006, addressed the issue of fatigue cracking of the wing front lower spar caps in Thrush Aircraft, Inc. (Thrush) Model 600 S2D and S2R (S–2R) series airplanes (type certificate previously held by Quality Aerospace, Inc. and Ayres Corporation). This type of fatigue cracking, if not addressed, could result in catastrophic wing failure. The

original 1997 AD was issued after an accident on an S2R series airplane in which the wing separated from the airplane in flight. Requirements of inspection and possible replacement were changed in 2000 to repetitive inspections and possible replacement. In 2006, the inspection rate was doubled after a completely severed spar cap was found on one of the affected airplanes and the FAA noted that it was working with Thrush to develop a future terminating action. Analysis indicated that an undetected crack had existed during the previous two repetitive inspections of that spar cap.

Subsequent FAA analysis has shown that spar cap fatigue cracking has increased as the fleet has aged, and will continue to increase. Consequently, the incidences of undetected cracks will increase, increasing the probability of catastrophic wing failure. The FAA has concluded that repetitive inspections, as required since the 2000 AD, are insufficient by themselves to ensure the safety of these airplanes and, accordingly, in this proposed AD the FAA proposes spar cap life limits to address this safety issue.

Objectives of, and Legal Basis for, the Proposed Rule

The FAA is issuing this rulemaking under the authority set forth in 49 U.S.C. 44701(a)(5), which mandates the Administrator prescribe regulations for practices, methods, and procedures necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on the airplanes identified in this AD.

Description of the Small Entities That the Proposed Rule Will Apply and an Estimate of Their Number

This proposed rule would potentially affect 808 U.S. registered and operated Thrush Model 600S2D and S2R (S–2R) series airplanes.¹ In conducting this analysis, the FAA reviewed data from the FAA Registry (Registry) to determine how many of the affected Thrush airplanes are registered and operated by small entities. The Registry indicates that these 808 airplanes are owned by 546 separate entities in agricultural aviation. Although the Registry does not record financial or business data about the registered owners of aircraft, and such data for these entities are not readily available elsewhere, it appears that most, if not all, of the 546 entities

are engaged in crop dusting, spraying, and seeding operations. These activities are classified in North American Industry Classification System (NAICS) industry, NAICS 115112—Soil Preparation, Planting, and Cultivating (including Crop Dusting, Crop Spraying). The concentration of these entities in a single NAICS industry reflects the specialized nature of agricultural airplanes with restricted airworthiness certificates. Furthermore, several of these entities were classified in the Standard Industrial Classification (SIC) equivalent of NAICS 115112 by <http://www.manta.com>. Although a few of these entities may also be engaged in firefighting, which is classified in NAICS 115310—Support Activities for Forestry (including Forest Fire Suppression), the FAA is unable to identify any of these entities as being principally engaged in firefighting. The Small Business Administration (SBA) small business classification for NAICS 115112 is \$6.5 million in business receipts, and \$16.5 million in business receipts for NAICS 115310. Only one entity in this sample appears to have business receipts over \$6.5 million, and no entity has business receipts in excess of \$16.5 million. Using the total number of airplanes owned as a size criterion, the FAA selected a sample of 41 of the largest affected entities, and found median sales shown by <http://www.manta.com> to be just \$250,000 annually. Firms in agricultural aviation appear to be inherently of small size. Accordingly, the FAA estimates that 545 small entities will be affected by this proposed rule.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed AD

The proposed AD does not impose any additional reporting or recordkeeping requirements beyond those required by the 2006 AD. The proposed rule would retain the requirements of AD 2006–07–15 and impose a life-limit on the wing front lower spar caps, which would require operators of affected airplanes to replace the wing front lower spar caps when the life-limit is reached.

The estimated compliance cost varies widely by airplane submodel; from a cost of zero for the more than 200 older airplanes that we estimate will retire² before the life-limit on their wing front lower spar caps is reached, to a cost of \$320,000 (5 replacements at \$64,000 per

¹ FAA Registry, http://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/releasable_aircraft_download. Data downloaded on 4/14/08.

² As fully analyzed in the “Cost of Compliance” section of this proposed rule, the FAA estimates that the airplanes affected by this proposed rule retire at age 40.

replacement) for two airplanes. Individual airplane compliance costs will likely result in costs to the small entities that own these airplanes. The exact cost will vary, depending on the number of affected Thrush airplanes owned by the entity and the specific

compliance cost for each airplane. The ownership table below shows the variation in the number of owners with particular numbers of airplanes. The table shows that almost 75% of the 546 individual owners have only one affected airplane, and more than 90% of

owners have no more than two affected airplanes. The average (mean) number of affected airplanes held is 1.48, while the median number held is just 1.00, so the median airplane cost is equivalent to the median owner cost.

NUMBER OF THRUSH AD OWNERS HAVING PARTICULAR NUMBERS OF AFFECTED AIRPLANES

	Number of affected airplanes held by single owner	Number of owners	Cumulative %
	1	406	74.4
	2	86	90.1
	3	26	94.9
	4	13	97.3
	5	7	98.5
	6	2	98.9
	7	2	99.3
	8	1	99.5
	9	2	99.8
	13	1	100.0
Total	808	546	
Mean	1.48		
Median	1.00		

Source: FAA Registry. Data downloaded on 4/18/08.

In the “Cost of Compliance” section of this proposed AD, the FAA estimates total cost (undiscounted) to be \$37.1 million and the present value cost to be \$25.2 million. The FAA estimates that 545 of the 546 airplanes affected by this proposed AD are small firms, and, in fact, 98.8% of the proposed AD’s estimated cost is attributed to small entities. The following documents and analyzes the impact of this cost on the substantial number of small firms identified in this proposed AD.

Economic Impact on Small Entities

Because the Registry does not collect financial or business data on these entities, and such data is not readily available elsewhere, the FAA also used Census Bureau size distribution data to assess the economic impact on small firms. The FAA used data from the 2002 Census since this is the latest Census for which size distribution by business receipts is readily available. These data are available in a special Census compilation for the SBA.³ The FAA used the data for NAICS 115112—Soil Preparation, Planting, and Cultivating (including Crop Dusting, Crop

Spraying), but did not use the data for NAICS 115310—Support Activities for Forestry (including Forest Fire Suppression) since, as noted above, a very high percentage of the affected small firms, if not all, meet the classification standard of NAICS 115112. Moreover, the size distribution of NAICS 115310 appears to be similar to that of NAICS 115112. The concentration of the affected airplanes in one NAICS industry, noted above, makes the use of Census data feasible and appropriate.

The relevant Census data are provided in the table below:

2002 CENSUS DATA FOR NAICS 115112—SOIL PREPARATION, PLANTING, AND CULTIVATING (INCLUDING CROP DUSTING, CROP SPRAYING)—SMALL SIZE CLASSES

Measure	Total	\$0–\$99,999	\$100,000–\$499,999	\$500,000–\$999,000	\$1,000,000–\$4,999,999	\$5,000,000–\$10,000,000
Firms	2336	509	992	412	394	29
Percentage of firms		21.8%	42.5%	17.6%	16.9%	1.2%
Upper bound percentile		21.8%	64.3%	81.9%	98.8%	100.0%
Est. Receipts (\$000)	\$1,531,004	\$25,681	\$257,447	\$286,462	\$772,401	\$189,013
Receipts/Firm (\$)	\$655,396	\$50,454	\$259,523	\$695,296	\$1,960,409	\$6,517,690

Source: “Firms” and “Est. Receipts” from Small Business Administration, Office of Advocacy. http://www.sba.gov/advo/research/us_rec02.txt.

The table shows the number of firm and business receipt data for the five smallest size classes of NAICS 115112 that encompass the size range of the firms affected by this proposed AD. In

the “Percentage of firms” row, for each size class, the FAA calculates that class’s number of firms as a percentage of the total number of firms in the five size classes. Cumulating this percentage

from the smallest to largest size class establishes the “Upper bound percentile”—the cumulated percentage of firms of business receipt size ranging up to the upper bound of the size class.

³ Small Business Administration, Office of Advocacy. http://www.sba.gov/advo/research/us_rec02.txt.

The proposed AD's cost for the firms at the upper bound percentiles is then estimated as the corresponding percentiles in the estimated firm-level compliance cost data. In order to assess the economic impact of the proposed AD, these costs are calculated as a percentage of the Census data upper bounds. For example, the upper bound percentile for the 100–500 thousand dollar size class is 64.3%, so the NAICS 115112 firms at that percentile are estimated to have \$500,000 business

receipts of \$500,000. As shown in the table below, the FAA then determined the estimated compliance cost of firms at the same percentile in the compliance cost data to be \$61,754. The FAA assumes these firms are the same so the percentage cost impact (Proposed AD Cost/Firm Size) is 12.4%. This procedure assumes the size distribution of the 808 firms affected by the proposed AD have a distribution similar to the overall distribution of the small firms in NAICS 115112. It also assumes

there is a perfect rank correlation between the size of the affected firms and the firms' compliance cost. While the latter assumption is certainly not the case, any deviation from such perfect correlation can only increase the impact of the proposed AD because smaller firms will have larger costs. Accordingly, the FAA's determination that the proposed AD will have a significant impact on a substantial number of small entities is unaffected.

ECONOMIC IMPACT OF THRUSH AD ON SMALL FIRMS

Proposed AD cost to firm	Firm percentile	Estimated firm size (Census Bureau receipts upper bound)	Proposed AD Cost/Firm Size (percent)	Cumulative number of firms
\$0	21.8th	\$100,000	0.0	119.2
\$61,754	64.3rd	500,000	12.4	351.5
\$91,335	81.9th	1,000,000	9.1	447.9
\$273,734	98.8th	5,000,000	5.5	540.2

The above table shows a zero-cost impact on a firm at the 21.8th percentile. This result reflects the estimate in the "Cost of Compliance" section of this proposed AD that more than 200 older airplanes will retire before their spar cap life-limits are reached. As already mentioned, the proposed AD cost for a firm at the 64.3rd percentile is \$61,754, which as a percentage of estimated firm size (size class upper bound) is 12.4% of annual business receipts. This impact declines to 9.1% for a firm at the 81.9th percentile and to 5.5% for a firm at the 98.8th percentile. As a result, the overall pattern is zero impact for the smallest of the small firms, owners of the oldest airplanes, but a highly positive impact for the medium-sized small firms. In percentage terms, this impact falls for the largest small firms, but remains at a substantial level. While the FAA can make no definitive inference on the impact of the proposed AD on firms between the 21.8th and 64.3rd percentiles, the FAA notes the cost varies from 9.1% up to 12.4% of annual business receipts for 96 firms between the 81.9th and 64.3rd percentiles and from 5.5% to 9.1% for 92 firms between the 98.8th percentile and the 81.9th percentile. These estimated percentage impacts are substantial and therefore, the FAA concludes that this proposed AD will have a significant impact on a substantial number of small entities.

Duplicative, Overlapping or Conflicting Federal Rules

There are no Federal rules that duplicate, overlap, or conflict with this proposed AD.

Significant Alternatives to the Proposed AD

The FAA considered relying on repetitive inspections as the sole safety method, but given that the past required repetitive inspections have not fully addressed this critical safety issue, the FAA has determined that a part life limit is also necessary. A life limit on the wing front lower spar caps is the only available sufficient action presently known to the FAA. Consequently, there are no significant viable alternatives to the proposed AD.

Request for Comments

The FAA has determined that this proposed rulemaking will have a significant economic impact on a substantial number of small entities. The FAA requests comments with supporting justification regarding this determination.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The statute does not consider legitimate domestic objectives, such as safety, as unnecessary. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA is issuing this proposed AD because of a known safety problem and, therefore, the proposed AD is not considered an unnecessary obstacle to international trade.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. The Act deems such a mandate to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$136.1 million.

This proposed AD does not contain such a mandate.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Could have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006-07-15, Amendment 39-14542 (71 FR 16691, April 4, 2006), and adding the following new AD:

Thrush Aircraft, Inc. (Type Certificate previously held by Quality Aerospace, Inc. and Ayres Corporation): Docket No. FAA-2007-27862; Directorate Identifier 2007-CE-036-AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by July 6, 2009.

Affected ADs

(b) The following lists a history of the ADs affected by this AD action:

- (1) This AD supersedes AD 2006-07-15, Amendment 39-14542;
- (2) AD 2006-07-15 superseded AD 2003-07-01, Amendment 39-13097;
- (3) AD 2003-07-01 superseded AD 2000-11-16, Amendment 39-11764;
- (4) AD 2000-11-16 superseded AD 97-17-03, Amendment 39-10195; and
- (5) AD 97-17-03 superseded AD 97-13-11, Amendment 39-10071.

Applicability

(c) This AD affects the following airplane models and serial numbers (S/Ns) in Table 1 that are certificated in any category when wing front lower spar cap part numbers (P/N) 20207-1, 20207-2, 20207-11, 20207-12, 20207-13, 20207-14, 20207-15, or 20207-16 are installed. This AD applies to the S/Ns in Table 1 with or without a "DC" suffix. This AD does not affect airplanes with wing front lower spar cap P/N 22507 (any dash number). The table also identifies the group that each airplane belongs in when determining inspection compliance times and life limit times for the parts:

TABLE 1—APPLICABILITY AND AIRPLANE GROUPS

Model	Serial Nos. (S/N)	Group
(1) S-2R	5000R through 5100R, except 5010R, 5031R, 5038R, 5047R, and 5085R	1
(2) S2R-G1	G1-101 through G1-106	1
(3) S2R-R1820	R1820-001 through R1820-035	1
(4) S2R-T15	T15-001 through T15-033 (also see paragraph (d) of this AD)	1
(5) S2R-T34	6000R through 6049R, T34-001 through T34-143, T34-145, T34-171, T34-180, and T34-181 (also see paragraph (e) of this AD).	1
(6) S2R-G10	G10-101 through G10-138, G10-140, and G10-141	2
(7) S2R-G5	G5-101 through G5-105	2
(8) S2R-G6	G6-101 through G6-147	2
(9) S2RHG-T65	T65-002 through T65-018	2
(10) S2R-R1820	R1820-036	2
(11) S2R-T34	T34-144, T34-146 through T34-170, T34-172 through T34-179, and T34-189 through T34-234 (also see paragraph (e) of this AD).	2
(12) S2R-T45	T45-001 through T45-014	2
(13) S2R-T65	T65-001 through T65-018	2
(14) 600 S2D	All serial numbers beginning with 600-1311D	3
(15) S-2R	1380R, 1416R through 2592R, 3000R, and 3002R	3
(16) S2R-R1340	R1340-001 through R1340-035	3
(17) S2R-R3S	R3S-001 through R3S-011	3
(18) S2R-T11	T11-001 through T11-005	3
(19) S2R-G1	G1-107 through G1-115	5
(20) S2R-G10	G10-139, G10-142 through G10-165	5
(21) S2R-G6	G6-148 through G6-155	5
(22) S2RHG-T34	T34HG-102	5
(23) S2R-T15	T15-034 through T15-040 (also see paragraph (d) of this AD)	5
(24) S2R-T34	T34-236 through T34-270 (also see paragraph (e) of this AD)	5
(25) S2R-T45	T45-015	5
(26) S-2R	5010R, 5031R, 5038R, 5047R, and 5085R	6

(d) The S/Ns of Model S2R-T15 airplanes could incorporate T15-xxx and T27-xxx (xxx is the variable for any of the S/Ns beginning with T15- and T27-). This AD applies to both of these S/N designations as they are both Model S2R-T15 airplanes.

(e) The S/Ns of Model S2R-T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx (xxx is the variable for any of the S/Ns beginning with T34-, T36-,

T41-, and T42-). This AD applies to all of these S/N designations as they are all Model S2R-T34 airplanes.

(f) Any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or a gas turbine engine greater than 600 horsepower, is a Group 1 airplane for the purposes of this AD. Inspect the airplane at the Group 1 compliance time

specified in this AD. Replace the wing front lower spar caps in accordance with the formulas given in paragraph (j) of this AD.

(g) Group 6 airplanes were originally manufactured with higher horsepower radial engines, but were converted to lower horsepower radial engines. They are now configured identically to Group 3 airplanes.

Unsafe Condition

(h) This AD is the result of the analysis of data from 117 wing front lower spar cap fatigue cracks found on similar design Model 600 S2D and S2R (S-2R) series airplanes and the FAA's determination that the replacement of high time wing front lower spar caps is necessary to address the unsafe condition for certain airplanes. Since we issued AD 2006-07-15, analysis reveals that inspections are not detecting all existing cracks, and incidences of undetected cracks are increasing. This AD retains the actions of AD 2006-07-15 and imposes a life limit on the wing front lower spar caps that requires you to replace the wing front lower spar caps when the life limit is reached. This AD also changes the requirements and applicability of the groups discussed above and removes the ultrasonic inspection method. We are issuing this AD to prevent wing front lower spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing.

Compliance

(i) To address the problem, do the following, unless already done:

(1) If you have already done an inspection required by AD 2006-07-15, within the next 30 days after the effective date of this AD, identify the number of hours time-in-service (TIS) since your last inspection required by AD 2006-07-15. You will need this to establish the inspection interval for the next inspection required by this AD.

(2) Inspect the two outboard bolt hole areas (whether 1/4-inch and 5/16-inch diameter bolt holes or both 5/16-inch diameter bolt holes) on each wing front lower spar cap for fatigue cracking using magnetic particle or eddy current procedures. If Kaplan splice blocks, P/N 22515-1/-3 or 88-251, are installed following Quality Aerospace, Inc. Custom Kit No. CK-AG-30, dated December 6, 2001, inspect the three outboard bolt hole areas on each wing front lower spar cap for fatigue cracking using magnetic particle or eddy current procedures. Use the compliance times listed in paragraph (i)(3) of this AD for the initial inspection and the compliance time listed in paragraphs (i)(5), (i)(6), or (i)(7) of this AD for the repetitive inspections. The cracks may emanate from the bolt hole on the face of the wing front lower spar cap or they may occur in the shaft of the hole. Inspect both of those areas.

(i) If using the magnetic particle method, inspect using the "Inspection" portion of the "Accomplishment Instructions" and "Lower Splice Fitting Removal and Installation Instructions" in Ayres Corporation Service Bulletin No. SB-AG-39, dated September 17, 1996. Do the inspection following American Society for Testing and Materials E 1444-01, using wet particles meeting the requirements of the Society for Automotive Engineers AMS 3046. **CAUTION:** Firmly support the wings during the inspection to prevent movement of the wing front lower spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the wing front lower spar

cap for bolt insertion and prevent damage to the bolt hole. Damage to the bolt hole inner surface or edge of the bolt hole can cause cracks to begin prematurely.

(ii) The inspection must be done by or supervised by a Level 2 or Level 3 inspector certified following the guidelines established by the American Society for Nondestructive Testing or MIL-STD-410.

(iii) If using eddy current methods, a procedure must be sent to the FAA, Atlanta Aircraft Certification Office (ACO), for approval before doing the inspection. Send your proposed procedure to the FAA, Atlanta ACO, ATTN: Cindy Lorenzen, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for the eddy current inspections, unless corrosion is visible. Eddy current inspection procedures previously approved under AD 2006-07-15, AD 2003-07-01, AD 2000-11-16, AD 97-13-11, and/or AD 97-17-03 remain valid for this AD.

(iv) If you change the inspection method used (magnetic particle or eddy current), the TIS intervals for repetitive inspections are based on the method used for the last inspection.

(3) If airplanes have not yet reached the threshold for the initial inspection required in AD 2006-07-15, initially inspect following the wing front lower spar cap hours total TIS schedule below or within the next 50 hours TIS after the effective date of this AD, whichever occurs later:

TABLE 2—INITIAL INSPECTION TIMES

Airplane group	Initially inspect upon accumulating the following hours total TIS on the wing front lower spar cap
(i) Group 1	2,000 hours TIS.
(ii) Group 2	1,400 hours TIS.
(iii) Group 3	6,400 hours TIS.
(iv) Group 5	1,000 hours TIS.
(v) Group 6	(A) S/N 5010R: 5,530 hours TIS.
	(B) S/N 5038R: 5,900 hours TIS.
	(C) S/N 5031R: 6,400 hours TIS.
	(D) S/N 5047R: 6,400 hours TIS.
	(E) S/N 5085R: 6,290 hours TIS.
(vi) Any airplane with the entire Custom Kit CK-AG-41 installed	2,000 hours TIS.

(4) Airplanes in all groups must meet the following conditions before doing the repetitive inspections required in paragraphs (i)(5), (i)(6), or (i)(7) of this AD:

(i) No cracks have been found previously on wing front lower spar cap; or

(ii) Small cracks have been repaired through cold work (or done as an option if never cracked) following Ayres Corporation Service Bulletin No. SB-AG-39, dated September 17, 1996; or

(iii) Small cracks have been repaired by reaming the 1/4-inch bolt hole to 5/16 inches diameter (or done as an option if never

cracked) following Ayres Corporation Custom Kit No. CK-AG-29, Part I, dated December 23, 1997; or

(iv) Small cracks have been repaired through previous alternative methods of compliance (AMOC); or

(v) Small cracks have been repaired by installing Kaplan splice blocks, P/N 22515-1/-3 or 88-251 (or done as an option if never cracked) following Quality Aerospace, Inc. Custom Kit No. CK-AG-30, dated December 6, 2001.

(5) Repetitively inspect Groups 1, 2, 3, and 6 airplanes that do not have "big butterfly"

plates and lower splice plates, P/Ns 20211-09 and P/N 20211-11, installed following Ayres Corporation Custom Kit No. CK-AG-29, Part II, dated December 23, 1997; or that do not have "big butterfly" plates and lower splice plates, P/Ns 94418-5 and 94418-7 or P/Ns 94418-13 and 94418-15, installed following Thrush Aircraft, Inc. Custom Kit No. CK-AG-41, Revision A, dated March 8, 2007; and meet the conditions in paragraph (i)(4) of this AD. Follow the wing front lower spar cap hours TIS compliance schedule below:

TABLE 3—REPETITIVE INSPECTION TIMES FOR AIRPLANE GROUPS 1, 2, 3, AND 6 WITHOUT “BIG BUTTERFLY” PLATES AND LOWER SPLICE PLATES

When airplanes accumulate the following hours TIS on the wing front lower spar cap since the last inspection required in AD 2006–07–15,	Inspect within the following hours TIS after the effective date of this AD,	Inspect thereafter at intervals not to exceed. . .
(i) <i>Magnetic Particle inspection:</i> .....	.....	250 hours TIS.
(A) 350 or more hours TIS	(A) 50 hours TIS.	
(B) 175 through 349 hours TIS	(B) 75 hours TIS.	
(C) Less than 175 hours TIS	(C) upon accumulating 250 hours TIS.	
(ii) <i>Eddy Current inspection:</i> .....	.....	350 hours TIS.
(A) 500 or more hours TIS	(A) 50 hours TIS.	
(B) 275 through 499 hours TIS	(B) 75 hours TIS.	
(C) Less than 275 hours TIS	(C) upon accumulating 350 hours TIS.	

(6) Repetitively inspect Groups 1, 2, 3, 5, and 6 airplanes that have “big butterfly” plates and lower splice plates, P/Ns 20211–09 and 20211–11, installed following Ayres Corporation Custom Kit No. CK–AG–29, Part

II, dated December 23, 1997; or that have “big butterfly” plates and lower splice plates, P/Ns 94418–5 and 94418–7, or 94418–13 and 94418–15, installed following Thrush Aircraft, Inc. Custom Kit No. CK–AG–41,

Revision A, dated March 8, 2007; and meet the conditions in paragraph (i)(4) of this AD. Follow the wing front lower spar cap hours TIS compliance schedule below:

TABLE 4—REPETITIVE INSPECTIONS TIMES FOR AIRPLANE GROUPS 1, 2, 3, 5, AND 6 WITH “BIG BUTTERFLY” PLATES AND LOWER SPLICE PLATES

When airplanes accumulate the following hours TIS on the wing front lower spar cap since the last inspection required in AD 2006–07–15,	Inspect within the following hours TIS after the effective date of this AD,	Inspect thereafter at intervals not to exceed. . .
(i) <i>Magnetic particle inspection:</i> .....	.....	450 hours TIS.
(A) 650 or more hours TIS	(A) 50 hours TIS.	
(B) 375 through 649 hours TIS	(B) 75 hours TIS.	
(C) Less than 375 hours TIS	(C) upon accumulating 450 hours TIS.	
(ii) <i>Eddy Current inspection:</i> .....	.....	625 hours TIS.
(A) 900 or more hours TIS	(A) 50 hours TIS.	
(B) 550 through 899 hours TIS	(B) 75 hours TIS.	
(C) Less than 550 hours TIS	(C) upon accumulating 625 hours TIS.	

Note 1: Group 5 airplanes had P/Ns 20211–09 and 20211–11 installed at the factory.

(7) Repetitively inspect airplanes that incorporate Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007, in its entirety that meet the conditions

in paragraph (i)(4) of this AD. Follow the wing front lower spar cap hours TIS compliance schedule below:

TABLE 5—REPETITIVE INSPECTION TIMES FOR AIRPLANES WITH THRUSH AIRCRAFT, INC. CUSTOM KIT NO. CK–AG–41, REVISION A, INCORPORATED IN ITS ENTIRETY

When using the following inspection methods,	Repetitively inspect at intervals not to exceed. . .
(i) Magnetic particle inspection	900 hours TIS
(ii) Eddy current inspection	1,250 hours TIS.

(8) Initially replace the wing front lower spar caps, P/Ns 20207–1, 20207–2, 20207–11, 20207–12, 20207–13, 20207–14, 20207–15, or

20207–16, at the times specified in Table 6 of this AD. Repetitively replace thereafter at

the life limit times specified in Table 7 of this AD.

TABLE 6—INITIAL COMPLIANCE TIME FOR WING FRONT LOWER SPAR CAP REPLACEMENT

Total hours TIS on the wing front lower spar cap	Replace the wing front lower spar cap upon accumulating the following hours TIS on the spar cap after the effective date of this AD.
(i) Group 1 with a radial engine and more than 15,000 hours TIS	500 hours.
(ii) Group 1 with a radial engine and 12,000 to 15,000 hours TIS	1,000 hours.
(iii) Group 1 with a radial engine and 9,000 to 11,999 hours TIS	1,500 hours.
(iv) Group 1 with a radial engine and 7,400 to 8,999 hours TIS	2,000 hours.
(v) Group 1 with a radial engine and less than 7,400 hours TIS	Use Table 7(xxii).
(vi) Group 1 with a turbine engine and more than 14,000 hours TIS	500 hours.

TABLE 6—INITIAL COMPLIANCE TIME FOR WING FRONT LOWER SPAR CAP REPLACEMENT—Continued

Total hours TIS on the wing front lower spar cap	Replace the wing front lower spar cap upon accumulating the following hours TIS on the spar cap after the effective date of this AD.
(vii) Group 1 with a turbine engine and 11,000 to 14,000 hours TIS	1,000 hours.
(viii) Group 1 with a turbine engine and 8,000 to 10,999 hours TIS	1,500 hours.
(ix) Group 1 with a turbine engine and 4,200 to 7,999 hours TIS	2,000 hours.
(x) Group 1 with a turbine engine and less than 4,200 hours TIS	Use Table 7(xxiii).
(xi) Group 2 with more than 9,000 hours TIS	500 hours.
(xii) Group 2 with 6,000 to 9,000 hours TIS	1,000 hours.
(xiii) Group 2 with 3,900 hours to 5,999 hours TIS	1,500 hours.
(xiv) Group 2 with less than 3,900 hours TIS	Use Table 7(xxiv).
(xv) Group 3 and 6 with more than 28,800 hours TIS	500 hours.
(xvi) Group 3 and 6 with 27,800 to 28,799 hours TIS	1,000 hours.
(xvii) Group 3 and 6 with less than 27,800 hours TIS	Use Table 7(xxv).
(xviii) Group 5 with more than 8,000 hours TIS	500 hours.
(xix) Group 5 with 5,000 to 7,999 hours TIS	1,000 hours.
(xx) Group 5 with 2,400 to 4,999 hours TIS	1,500 hours.
(xxi) Group 5 with less than 2,400 hours TIS	Use Table 7(xxvi).

TABLE 7—WING FRONT LOWER SPAR CAP LIFE LIMITS

Airplane Group	Replace wing front lower spar cap upon the accumulation of the following hours TIS on the spar cap:
(xxii) Group 1 with a radial engine	9,400 hours TIS.
(xxiii) Group 1 with a turbine engine	6,200 hours TIS.
(xxiv) Group 2	5,400 hours TIS.
(xxv) Groups 3 and 6	28,800 hours TIS.
(xxvi) Group 5	3,900 hours TIS with original wing front lower spar cap P/N 20207-11 or 20207-12.
	5,400 hours TIS after original wing front lower spar cap has been replaced with any P/N 20207-xx wing front lower spar cap.

Note 2: There is evidence of sharp, uneven edges on the spar cap bolt holes that resulted from the manufacturing process in Group 5 airplanes. Once the original spar caps are replaced, the life limit increases.

(j) As previously stated in paragraph (f) of this AD, any Group 3 airplane that has been

modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or a gas turbine engine greater than 600 horsepower, is a Group 1 airplane for the purposes of this AD. Replace the spar caps using the following formulas.

(1) For airplanes that were originally Group 3 airplanes and later modified by installing a piston engine of greater than 600 horsepower and/or a hopper capacity of greater than 410 gallons, calculate the equivalent Group 1 hours TIS on each spar cap as follows:

$$(i) \text{ Usage factor} = \frac{\text{Total hrs. on cap pre-mod.}}{28,800} + \frac{\text{Additional hrs. on cap post-mod.}}{9,400}$$

$$(ii) \text{ Equivalent Group 1 hours TIS} = 9,400 \times \text{Usage Factor}$$

(2) For airplanes that were originally Group 3 airplanes and later modified by installing a turbine engine of greater than 600

horsepower, with or without installing a hopper with greater than 410 gallon capacity,

calculate the equivalent Group 1 hours TIS on each spar cap as follows:

$$(i) \text{ Usage factor} = \frac{\text{Total hrs. on cap pre-mod.}}{28,800} + \frac{\text{Additional hrs. on cap post-mod.}}{6,200}$$

$$(ii) \text{ Equivalent Group 1 hours TIS} = 6,200 \times \text{Usage Factor}$$

(ii) Equivalent Group 1 hours TIS = 6,200 × Usage Factor

(3) When the equivalent Group 1 hours TIS on the wing front lower spar cap equals the life limit of 9,400 hours TIS if a radial piston

engine is installed or reaches 6,200 hours TIS if a turbine engine is installed, the wing front lower spar cap must be replaced. Use Table 6 if over the life limit.

(4) See the appendix to this AD for examples of how to calculate the applicable life limit.

(k) If any cracks are found during any inspection required by this AD, you must

repair the cracks or replace the wing front lower spar cap before further flight.

(1) Use the cold work process to ream out small cracks as defined in Ayres Corporation Service Bulletin No. SB-AG-39, dated September 17, 1996, and deburr the bolt hole edges with the splice blocks removed after cold work is performed; or

(2) If the crack is found in a 1/4-inch bolt hole, ream the 1/4-inch bolt hole to 5/16 inches diameter as defined in Part I of Ayres Corporation Custom Kit No. CK-AG-29, dated December 23, 1997; or

(3) Install Kaplan splice blocks, P/N 22515-1/-3 or 88-251, following Quality Aerospace, Inc. Custom Kit No. CK-AG-30, dated December 6, 2001; or

(4) Replace the affected wing front lower spar cap following an FAA-approved procedure (the applicable maintenance manual contains these procedures) or replace both lower spar caps and the surrounding structure following Thrush Aircraft, Inc. Custom Kit No. CK-AG-41, Revision A, dated March 8, 2007. Although not mandatory, the FAA recommends installing Custom Kit No. CK-AG-41, Revision A, in its entirety. The additional structure provided in the custom kit will provide a greater level of safety than the minimum acceptable level of safety provided by replacing just the lower spar cap.

(l) If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued AMOCs with AD 97-17-03 to ream the 1/4-inch bolt hole to 5/16 inches diameter to remove small cracks. Ayres Corporation Custom Kit No. CK-AG-29, Part I, dated December 23, 1997, also provides procedures to ream the 1/4-inch bolt hole to 5/16 inches diameter, which may remove a small crack. Resizing the holes to the required size to install a Kaplan splice block may also remove small cracks. If you use any of these methods to remove cracks and the airplane is re-inspected before further flight and no cracks are found, you may continue to follow the repetitive inspection intervals for your airplane listed in paragraphs (i)(5), (i)(6), or (i)(7) of this AD.

(m) For all inspection methods (magnetic particle or eddy current), hours TIS for initial and repetitive inspections intervals and wing front lower spar cap life limit start over when the wing front lower spar cap is replaced with a new P/N 20207-1, 20207-2, 20207-11, 20207-12, 20207-13, 20207-14, 20207-15, or 20207-16. These wing front lower spar caps must be inspected as specified in paragraphs (i)(3), (i)(5), (i)(6), and (i)(7) of this AD.

(1) If the wings or wing front lower spar caps were replaced with new or used wings or wing front lower spar caps during the life of the airplane and the logbook records positively show the hours TIS of the replacement wings or wing front lower spar caps, then initially inspect at applicable times specified in paragraph (i)(3) of this AD. Repetitively inspect thereafter at intervals specified in paragraphs (i)(5), (i)(6), or (i)(7) of this AD. Replace the wing front lower spar caps upon reaching the life limit specified in Table 7 of this AD.

(2) If the wings or wing front lower spar caps were replaced with new or used wings or wing front lower spar caps during the life of the airplane and logbook records do not positively show the hours TIS of the replacement wings or wing front lower spar caps, then inspect within 50 hours TIS after the effective date of this AD, unless already done. Repetitively inspect thereafter at intervals specified in paragraphs (i)(5), (i)(6), or (i)(7) of this AD. Replace the wing front lower spar caps within 500 hours TIS after the effective date of this AD.

(3) If both wing front lower spar caps are replaced by installing the entire Thrush Aircraft, Inc. Custom Kit No. CK-AG-41, Revision A, dated March 8, 2007, then initially inspect at 2,000 hours TIS as shown in paragraph (i)(3) of this AD. Repetitively inspect thereafter at intervals specified in paragraph (i)(7) of this AD. Replace the wing front lower spar caps at times specified in paragraph (i)(8) of this AD.

(n) Any wing front lower spar cap that is removed and is at or beyond the replacement time specified in this AD must be disposed of following the procedures in 14 CFR Part 43.10.

(o) Replacement times start over when the wing front lower spar cap is replaced with a new P/N 20207-1, 20207-2, 20207-11, 20207-12, 20207-13, 20207-14, 20207-15, or 20207-16. These wing front lower spar caps are now life-limited parts and must be replaced upon the accumulation of the hours TIS specified in Table 7 of this AD.

(p) Report any cracks you find within 10 days after the cracks are found or within 10 days after the effective date of this AD, whichever occurs later. Send your report to Cindy Lorenzen, Aerospace Engineer, ACE-115A, Atlanta ACO, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703-6078; facsimile: (770) 703-6097; e-mail: cindy.lorenzen@faa.gov. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120-0056. Include in your report the following information:

- (1) Aircraft model and serial number;
- (2) Engine model;
- (3) Aircraft hours TIS;
- (4) Left and right wing front lower spar cap hours TIS;
- (5) Hours TIS on the spar cap since last inspection;
- (6) Crack location and size;
- (7) Procedure (magnetic particle, ultrasonic, or eddy current) used for the last inspection;
- (8) Description of any previous modifications and hours TIS when the modification was done, such as engine model change, installation of winglets, hopper capacity increase, cold working procedure done on bolt holes, or installation of butterfly plates; and

(9) Information on corrective action taken or installation of Thrush Aircraft, Inc. Custom Kit No. CK-AG-41, Revision A, dated March 8, 2007, and when this corrective action was taken.

Special Flight Permits

(q) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by the following conditions:

- (1) The hopper is empty;
- (2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS); and
- (3) Flight into known turbulence is prohibited.

Alternative Methods of Compliance (AMOCs)

(r) The Manager, Atlanta Aircraft Certification Office, FAA, ATTN: Cindy Lorenzen, Aerospace Engineer, ACE-115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703-6078; facsimile: (770) 703-6097; e-mail: cindy.lorenzen@faa.gov; or Keith Noles, Aerospace Engineer, ACE-117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6085; facsimile: (770) 703-6097; e-mail: gregory.noles@faa.gov, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(s) AMOCs approved for AD 2006-07-15, AD 2003-07-01, AD 2000-11-16, AD 97-13-11, and/or AD 97-17-03 are approved as AMOCs for this AD except for those pertaining to ultrasonic inspection methods.

Related Information

(t) To get copies of the service information referenced in this AD, contact Thrush Aircraft, Inc. at 300 Old Pretoria Road, P.O. Box 3149, Albany, Georgia 31706-3149 or go to <http://www.thrushaircraft.com>. To view the AD docket, go to the U.S. Department of Transportation, Docket Operations, M-30 West Building Ground Floor, Room W12-140, New Jersey Avenue, SE., Washington, DC, or on the Internet at <http://www.regulations.gov>. The docket number is Docket No. FAA-2007-27862; Directorate Identifier 2007-CE-036-AD.

Appendix to Docket No. FAA-2007-27862

The following are examples of calculating Equivalent Group 1 hours.

Example 1: S/N xxx was originally a Group 3 airplane; later it was modified with a Wright R-1820-71, 1200 horsepower, radial engine when the wing front lower spar caps had 15,700 hours TIS on them. The wing front lower spar caps have accumulated an additional 8,200 hours since the engine conversion for a total of 23,900 hours TIS on the wing front lower spar caps.

$Usage\ Factor = 15,700\ hours / 23,900\ hours = 0.657$
 $Equivalent\ Group\ 1\ hours = 9,400 \times 0.657 = 6,173\ hours$

The spar caps will need to be replaced within the next 1,000 hours TIS after the effective date of this AD as determined by Table 6 for a Group 1 airplane with a radial engine with between 12,000 and 15,000 hours TIS.

Example 2: S/N yyy was originally a Group 3 airplane; later it was modified with a PT6A-34, 750 horsepower, turbine engine when the wing front lower spar caps had 5,300 hours TIS on them. The wing front lower spar caps now have 7,700 hours TIS.

Usage Factor = $5,300 \text{ hours} / 28,800 + (7,700 - 5,300) / 6,200 = 0.571$ Equivalent Group 1 hours = $6,200 \times 0.571 = 3,540$ hours.

The spar caps will need to be replaced at 6,200 Equivalent Group 1 total hours TIS, which is within the next 2,660 hours TIS ($6,200 - 3,540 = 2,660$).

Issued in Kansas City, Missouri, on April 27, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-10162 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0311; Airspace Docket No. 09-ANM-3]

RIN 2120-AA66

Proposed Establishment of VOR Federal Airway V-626; UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish VOR Federal Airway 626 (V-626) located between the Myton, UT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Salt Lake City terminal Area. This route would improve aircraft flow during busy traffic periods into the Salt Lake City terminal area. This new jet route would provide a more precise means of navigation and reduce controller workload.

DATES: Comments must be received on or before June 18, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (202) 366-9826. You must identify FAA Docket No. FAA-2009-0311 and Airspace Docket No. 09-ANM-3 at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace

and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2009-0311 and Airspace Docket No. 09-ANM-3) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2009-0311 and Airspace Docket No. 09-ANM-3." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and

phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 9805.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

In November 2008, Salt Lake City Terminal Area Approach Control Facility (TRACON) requested the establishment of a new airway to facilitate the handling of aircraft entering the Salt Lake City terminal area. This action responds to that request.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish VOR Federal Airway 626 (V-626) from the Myton, UT, VORTAC to the Salt Lake City terminal Area. This new route will provide a more precise means of navigation and reduce controller workload.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The domestic VOR Federal Airway listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a VOR Federal Airway in Utah.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V-626 [New]

From Myton, UT, to int Myton 267T/253M and Fairfield VORTAC 126T/110M

* * * * *

Issued in Washington, DC, on April 24, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–10163 Filed 5–1–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–847; MB Docket No. 09–54; RM–11520].

Radio Broadcasting Services; Waverly, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Auburn Network, Inc. Petitioner proposes the substitution of FM Channel 262A for vacant Channel 232A at Waverly, Alabama. The purpose of the requested channel substitution at Custer is to accommodate Petitioner's pending application to change the channel FM Station WGZZ from Channel 262A to Channel 232 at Waverly. Channel 262A can be allotted at Waverly in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 km (8.1 miles) northeast of Waverly. The proposed coordinates for Channel 262A at Waverly are 32–48–14 North Latitude and 85–41–28 West Longitude. *See SUPPLEMENTARY INFORMATION infra.*

DATES: Comments must be filed on or before June 8, 2009, and reply comments on or before June 23, 2009.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve petitioner's counsel as follows: Mark N. Lipp, Esq., Scott Woodworth, Esq., Wiley Rein LLP, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 09–54, adopted April 15, 2009, and released April 17, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, <http://www.bcpweb.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 232A and by adding Channel 262A at Waverly.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–10191 Filed 5–1–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 09–833; MB Docket No. 08–58; RM–11425]

Radio Broadcasting Services; Laramie, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division, at the request of Superior Broadcasting of Denver, LLC, and White Park Broadcasting, Inc., the petitioner and counterproponent, respectively, in this proceeding, dismisses the petition for rulemaking and the counterproposal and terminates the proceeding.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 08–58, adopted April 15, 2009, and released April 17, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, <http://www.bcpweb.com>. The *Memorandum Opinion and Order* is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–10197 Filed 5–1–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 09–836; MB Docket No. 09–50; RM–11515]

Radio Broadcasting Services; Cut Bank, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division, at the request of College Creek Media, LLC, proposes the substitution of Channel 265C1 for Channel 274C1 at Cut Bank, Montana, to resolve a short-spacing to FM Station KEAU's authorized transmitter site. Channel 265C1 can be allotted consistent with the minimum distance separation requirements of the Commission's Rules with the imposition of a site restriction located 39.4 kilometers (24.5 miles) east of Cut Bank. The proposed reference coordinates for Channel 265C1 at Cut Bank are 48–39–28 NL and 111–47–29 WL. The proposed allotment of Channel 265C1 at Cut Bank is located 320 kilometers (199 miles) from the Canadian Border. Therefore, Canadian concurrence has been requested.

DATES: Comments must be filed on or before June 8, 2009, and reply comments on or before June 23, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Lee J. Peltzman, Esq., c/o College Creek Media, LLC, Shainis & Peltzman, Chartered, 1850 M Street, NW., Suite 240, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–50, adopted April 15, 2009, and released April 17, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail <http://www.BCPIWEB.com>. This document

does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 274C1 and adding Channel 265C1 at Cut Bank.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–10194 Filed 5–1–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2009–0064]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by the Alliance of Automobile Manufacturers (the Alliance) requesting that the agency amend the provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," that apply to the selection of child restraint systems for testing advanced air bag systems. Among other things, the Alliance requested that the agency commit to amending the list of child restraints in Appendix A of FMVSS No. 208 every three years and allow manufacturers the option of certifying vehicles to any edition of Appendix A for five model years after the edition first becomes effective. We are denying these requests because they are not conducive to maintaining the appendix, do not ensure child restraints are representative of the current fleet for testing with advanced air bag systems, and are unnecessarily restrictive.

FOR FURTHER INFORMATION CONTACT: Carla Rush, Office of Crashworthiness Standards (telephone 202-366-4583, fax 202-366-2739). For legal issues, contact Deirdre Fujita, Office of Chief Counsel (telephone 202-366-2992, fax 202-366-3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background on Appendix A Lead Time

On May 12, 2000, NHTSA issued a final rule for advanced air bags ("Advanced Air Bag Rule"), that amended FMVSS No. 208 to, among other things, minimize injuries to small adults and young children due to air bag deployment (65 FR 30680; Docket No. NHTSA-00-7013). Under the Advanced Air Bag Rule, in order to minimize the risk to infants and small children from deploying air bags, vehicle manufacturers may suppress an air bag in the presence of a child restraint system (CRS) or provide a low risk deployment (LRD) system. To minimize the risk to children, manufacturers relying on an air bag suppression or LRD system must ensure that the vehicle complies with the suppression or LRD requirements when tested with the CRSs specified in Appendix A of the standard. As part of ensuring the robustness of automatic air bag suppression and LRD systems, the CRSs in the appendix represent a large portion of the CRS market and CRSs

with unique size and weight characteristics. NHTSA stated in the Advanced Air Bag Rule that the list will be updated periodically to subtract restraints that are no longer in production and to add new restraints (65 FR at 30724).

On December 18, 2001, NHTSA published a final rule that responded to petitions for reconsideration of the Advanced Air Bag Rule (66 FR 65376; Docket No. NHTSA 01-11110). Among other matters, to provide sufficient lead time for vehicle compliance, NHTSA stated in that document:

[W]e will specify in the text of any updated appendix that its effective date shall be at least one year from the date of publication. All vehicles certified on or after that effective date will need to comply with the standard using the restraints on the updated list. We believe this one-year leadtime will provide manufacturers with sufficient time to ensure that their vehicles comply * * *.

NHTSA received petitions for reconsideration of amendments made in that December 18, 2001 final rule, including those from the Alliance and from several vehicle manufacturers concerning Appendix A. Among other matters, Mitsubishi requested a two-year phase-in for changes to Appendix A.

NHTSA responded on November 19, 2003 (final rule responding in part to petitions for reconsideration, 68 FR 65179; Docket No. NHTSA-03-16476). The agency stated that it has decided to perform an annual review of Appendix A "with the objective of making appropriate updates" and discussed factors that the agency will consider in deciding whether Appendix A should be updated (68 FR at 65188.) These factors included such things as whether a particular restraint has been a high sales volume model, whether its mass and dimensions are representative of many restraints on the market, whether its mass and dimensions represent outliers,¹ and whether a variety of restraint manufacturers are represented in the appendix. We explained that, by conducting these reviews we ensure that the spectrum of CRSs in the appendix is representative of the CRS population at that time. It would also enable NHTSA to determine the availability of the CRSs and determine any substantial change in design. NHTSA also stated: "Although NHTSA will review the appendix every year, we may not amend it annually." *Id.*²

¹ An outlier would be an exceptionally large or small and/or heavy or light CRS that is significantly different than most seats in its class.

² NHTSA also amended Appendix A by adding two CRSs that are equipped with components that attach to a vehicle's LATCH system ("Lower Anchors and Tethers for Children"). LATCH is a

The November 19, 2003 final rule also slightly changed the agency's earlier position on lead time, which had been that we would make any change to the appendix effective after one year. The November 2003 final rule stated that, in recognition that manufacturers need to know what CRSs will be included as they design their new models, any change to Appendix A would become effective the next model year introduced one year after publication of the final rule modifying the appendix. The agency expressed concern that "a two-year lead time could result in a greater percentage of the CRSs in Appendix A being removed from production before the amended appendix takes effect," and acknowledged that "the one-year lead time is consistent with the agency's intent that occupant protection detection systems be robust and able to detect any CRS, including those that are relatively new to the market." *Id.* Subsequently, the agency denied Mitsubishi's petition requesting a two-year lead time (February 9, 2005; 70 FR 6777; Docket No. NHTSA-04-18905).

On November 12, 2008, the agency published a final rule that updated Appendix A to replace a number of older CRSs with those that were more available and more representative of the CRSs currently on the market (73 FR 66786; Docket No. NHTSA-08-0168). The final rule continued to call the current appendix "Appendix A," and established an "Appendix A-1" consisting of the updated appendix. The revisions made to establish Appendix A-1 included the deletion of seven existing CRSs, the addition of five new CRSs, and cosmetic replacements for seven existing CRSs. The final rule phased-in the use of the Appendix A-1 CRSs in compliance testing. Under the phase-in, 50 percent of vehicles manufactured on or after September 1, 2009 will be subject to testing by NHTSA using Appendix A-1, and all vehicles tested by NHTSA that are manufactured on or after September 1,

term developed by industry to refer to the standardized user-ready child restraint anchorage system that vehicle manufacturers must install in vehicles under FMVSS No. 225, *Child Restraint Anchorage Systems* (49 CFR 571.225). FMVSS No. 225 (paragraph S5(d)) does not permit vehicle manufacturers to install LATCH systems in front designated seating positions unless the vehicle has an air bag on-off switch. Therefore, only a few vehicles will be tested with LATCH CRSs.

A few other final rules amending Appendix A are not discussed in this section, some of which pertained to extending the lead time for testing vehicles with LATCH-equipped CRSs. For instance, on September 25, 2007 (72 FR 54402), NHTSA published a final rule establishing a test procedure for LATCH-equipped CRSs. That final rule set a compliance date of September 1, 2008, for testing vehicles using the procedure.

2010 will be tested using Appendix A–1.

The agency believed that the phase-in effectively balanced the competing considerations in updating the appendix, namely, the need to have a representative list that ensures the compatibility of suppression and LRD systems with CRSs in the field, while maintaining some stability to minimize the certification burden on vehicle manufacturers. Importantly too, the phase-in accounted for the agency's determination that there was not a significant shift in the CRS characteristics pertinent to air bag occupant sensing performance that compelled an expedited compliance date because of real-world safety benefits that could be gained.³

II. Petition for Rulemaking

On April 27, 2007, the Alliance of Automobile Manufacturers (Alliance),⁴ submitted a petition for rulemaking requesting that the agency “amend the provisions of FMVSS No. 208 that apply to the selection of specific CRSs for testing under the provisions of the standard that are intended to protect children from air bag-induced injuries—S19, S21, S23, and S24—and to amend Appendix A to the standard.” The petition first suggested that the agency “commit itself to amending Appendix A every three years (rather than annually).” The Alliance stated its belief that three years is a reasonable compromise between the goal of assuring “that the listed CRSs are representative of the CRSs on the market” and the “certification burdens faced by manufacturers” when the appendix is updated. It stated that even though the appendix (at the time of the petition) had not been updated for several years, “the Alliance is not aware of any incidents in which a child in a CRS in the front seat of a vehicle equipped with advanced air bags received a serious injury due to the deployment of an air bag.” It also stated that this time frame could have its exceptions if an unanticipated safety need arose, *e.g.*, the introduction of “an entirely new type of CRS that captures a significant portion of the market.”

Second, the Alliance requested that the agency allow manufacturers the option of certifying vehicles to any

edition of the appendix for five model years after the edition first becomes effective. It suggested that such a time frame is consistent with the six-year CRS expiration date established by many CRS manufacturers, and the time frames within which vehicle models are redesigned. The Alliance also stated that this would allow manufacturers to reasonably forecast how many of each type of CRS they will need to acquire for compliance and certification purposes. The Alliance stated its belief that the approach will not adversely affect the safety of children.

The agency is denying the petition, for the reasons discussed below.⁵ In considering the petition, we have reviewed our earlier views about lead time from the perspective we have gained from experience with advanced air bag sensing systems since the Advanced Air Bag Rule was published. We generally confirm those views, but do simplify our view of lead time issues.

III. Agency Analysis

a. Request To Have the Agency Commit To Amending the Appendix Every Three Years

We are denying the petitioner's request that NHTSA amend the appendix every three years “rather than annually.” First, the agency has not said that it would amend the appendix annually. NHTSA made clear in the November 19, 2003 document that “Although NHTSA will review the appendix every year, we may not amend it annually.”

Second, we confirm our view that annual reviews to the appendix are important and that we intend to continue to review the appendix annually. Annual reviews help us keep the appendix up to date and representative of CRSs currently in the market. The review includes careful consideration of information received by NHTSA in the agency's Ease-of-Use (EOU) consumer information program, which evaluates all CRSs available for sale at retail outlets, and data from NHTSA's FMVSS No. 213 compliance program. An annual review keeps the agency informed of CRS trends and poised to identify new CRSs with unique characteristics that could

possibly challenge an advanced air bag system.

Finally, to the extent that the Alliance requests that we commit to amending the appendix not more frequently than every three years in the absence of “an unanticipated safety need (such as the introduction of an entirely new type of CRS that captures a significant portion of the market),” that request is denied. A commitment of the kind suggested by the petitioner interferes with the agency's ability to manage its rulemaking resources as it deems appropriate, and could hamper our ability to respond quickly to changes in CRS or air bag system designs. The agency would best be able to respond to a safety need if it continues to have full ability to decide when to initiate rulemaking on the appendix to address changes in CRS design or availability, changes in air bag occupant sensing systems, or any other factor that warrants the initiation of rulemaking. Thus, we will not agree to the suggested change.

b. Request To Allow Manufacturers the Option of Certifying Vehicles to an Edition of the Appendix for Five Model Years After the Edition First Becomes Effective

We are denying the petitioner's request to allow a manufacturer-option of certifying vehicles to any edition of the appendix for five model years after that edition first becomes effective. We anticipate there could be safety issues associated with adopting a set five-year lead time period. A five-year lead time could encumber the agency's ability to ensure that a vehicle advanced air bag system is compatible with a changing CRSs market. The allowance of a five-year certification period, on top of a one to two year rulemaking, could provide an inordinate and potentially unsafe six to seven year time period where a new CRS introduced into the marketplace could be incorrectly identified by a vehicle's advanced air bag system.

Conversely, the agency may find through the annual review process that the CRS market has remained relatively unchanged in design characteristics, yet the appendix should be updated to enhance the availability of the listed CRSs. In that instance, a lead time period of less than five years might be appropriate to facilitate the agency's acquisition and use of CRSs in the appendix. In addition, the request to allow certification to either a current list or one becoming effective in five years would require maintaining two lists of CRSs, which is more burdensome on our enforcement program than maintaining a single list. However, we

³ There are pending petitions for reconsideration of this final rule. The petitions primarily ask for more lead time to test and certify vehicles to the amended appendix.

⁴ The Alliance members at the time of this petition include: BMW Group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

⁵ The Alliance's petition included other requests to amend provisions in FMVSS No. 208 relating to Appendix A. These have been addressed in prior agency documents. For example, a request that we issue a final rule establishing test procedures for LATCH-equipped CRSs was addressed in the July 24, 2007 final rule, *supra*. A request to delete the Britax Expressway ISOFIX from Appendix A was addressed in the November 12, 2008 final rule, *supra*.

do not find the concept of early compliance with an updated list to be without merit.⁶ Moreover, flexibility in setting a period in which manufacturers may use either of two lists would enable NHTSA to better manage the resources of its enforcement program. Given the spectrum of potential reasons the appendix might be changed, we do not agree on the appropriateness of standardizing a set lead time period of five years for all future updates of the appendix.

In reviewing the petition, we have noted that the agency's views concerning the appropriate lead time for Appendix A amendments have changed over the years. Originally, at the time of the Advanced Air Bag rule the agency had generally envisioned providing only a one-year lead time for amendments to the appendix (66 FR at 65390). A short time later, in recognition that vehicle manufacturers need to know what CRSs are included in the appendix as they design new model vehicles, NHTSA said that any changes to Appendix A will be effective for the next model year introduced one year after publication of the final rule modifying the appendix (68 FR at 65188). More recently, based in part on more experience with the capabilities of advanced air bag sensing systems recognizing CRSs in the field, in the November 2008 final rule the agency adopted a lead time schedule that allowed extra flexibility for completing certification, permitting a phase-in to assist in the transition from the CRSs in Appendix A to those in Appendix A-1. In doing so, the agency exercised its ability and willingness to achieve a balance between keeping advanced air bag sensing systems current and lessening the certification testing burdens on the vehicle manufacturers.

In future rulemakings on the appendix, we intend to continue the approach taken in the November 2008 final rule that established an implementation date for the new edition of Appendix A (A-1) based on the unique circumstances of the particular rulemaking. We believe that there no longer is a need to have a set one-year lead time for any amendment to the appendix; we believe, moreover, that a determination of lead time is best made within the context of the rulemaking that would amend the appendix, taking into account the circumstances involved

in the particular rulemaking action. While a lead time of five years may be too long for an Appendix A rulemaking in the future, a lead time of just one year may be inappropriate under the circumstances surrounding the rulemaking. In addition, we will also consider the need for the allowance of early and/or phased compliance with a new list against the burden to the agency of maintaining two lists. The agency will address the lead time and early/phased compliance needs and concerns for future Appendix A amendments on a rulemaking-by-rulemaking basis, within the notice and comment rulemaking forum appropriate for making those decisions.

IV. Conclusion

NHTSA will continue its process of reviewing the appendix annually to minimize problems with CRS availability and to identify emerging trends in CRS design characteristics. Although NHTSA will review Appendix A annually, we will not necessarily amend Appendix A annually. We will make the determination of whether to engage in rulemaking by considering information such as the factors discussed in the 2003 final rule, including emerging design trends or safety issues that may arise. To the extent that the Alliance requested that the agency commit to a 3-year timeframe for amending Appendix A, we are denying that request. NHTSA is also denying the Alliance's request to allow certification to any version of Appendix A for a fixed five-year time period after a new edition of Appendix A becomes effective. We believe that the agency should maintain its ability to make the determination of lead time in the context of the Appendix A rulemaking proceedings.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: April 28, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9-10098 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-AS25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 1 to the Tilefish Fishery Management Plan (FMP) (Amendment 1), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 1. The proposed measures in Amendment 1 would address issues and problems that have been identified since the FMP was first implemented. These measures are considered a means to achieve the management objectives of the FMP, and include measures to implement an IFQ program.

DATES: Comments must be received on or before July 6, 2009.

ADDRESSES: An FEIS was prepared for Amendment 1 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 1, including the FEIS and the IRFA, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. You may submit comments, identified by 0648-AS25, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Fax: (978) 281-9135, Attn: Timothy Cardiasmenos.
- Mail: Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the

⁶ Early compliance is permitted in the November 2008 Final Rule with an effective date of January 12, 2009. Furthermore, during the production year beginning September 1, 2009, a manufacturer may certify any percentage above 50 percent of their production to Appendix A-1 and the remainder to Appendix A.

envelope, "Comments on Tilefish Amendment 1."

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Timothy Cardiasmenos, Fishery Policy Analyst, phone 978-281-9204, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

In March 2004, the Council began the development of Amendment 1 to the FMP to evaluate alternatives for a limited access privilege program and other measures for limited access vessels. The Council held 17 public meetings on Amendment 1 between March 2004 and April 2008. After considering a wide range of issues, alternatives, and public input, the Council submitted a draft environmental impact statement (DEIS) for Amendment 1 to NMFS. The notice of availability for the DEIS published in the **Federal Register** on December 28, 2007 (72 FR 73798). Following the public comment period on the DEIS that ended on February 11, 2008, the

Council adopted Amendment 1 on April 10, 2008. Amendment 1 was developed and adopted by the Council in response to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law. Amendment 1 management measures were developed by the Council and would: (1) Implement an Individual Fishing Quota (IFQ) program; (2) establish IFQ transferability of ownership; (3) establish a cap on the acquisition of IFQ allocation (temporary and permanent); (4) address fees and cost recovery; (5) establish flexibility to revise/adjust the IFQ program; (6) establish IFQ reporting requirements; (7) modify the Interactive Voice Response (IVR) reporting requirements; (8) implement recreational permits and reporting requirements; (9) improve monitoring of tilefish commercial landings; (10) expand the list of management measures that can be adjusted via the framework adjustment process; (11) modify the Essential Fish Habitat (EFH) designation; (12) modify the habitat areas of particular concern (HAPC) designation; and (13) implement measures to reduce gear impacts on EFH within the Exclusive Economic Zone. The proposed IFQ program measures are intended to reduce overcapacity in the commercial fishery, and to eliminate, to the extent possible, problems associated with a derby-style fishery. Amendment 1 also would create a tilefish open access Charter/Party permit, which would require reporting by the recreational component of the fishery. When the original FMP was instituted in 2001, the recreational component of the fishery was believed to be small. However,

anecdotal evidence suggests that in recent years the recreational component of the fishery may have grown. The tilefish open access Charter/Party permit would provide NMFS with the ability to collect landings information on this component of the fishery in order to properly assess the health of the stock.

Public comments are being solicited on Amendment 1, and its incorporated documents, through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 1 will also be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 1 to be considered in the approval/disapproval decision on the amendment. All comments received by July 6, 2009, whether specifically directed to Amendment 1, or to the proposed rule for Amendment 1, will be considered in the approval/disapproval decision on Amendment 1. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 1. To be considered, comments must be received by the close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 29, 2009.

Alan D. Risenhoover,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. E9-10181 Filed 5-1-09; 8:45 am]

BILLING CODE S

Notices

Federal Register

Vol. 74, No. 84

Monday, May 4, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Risk Management Agency to request approval for the collection of information in support of the agency's mission under section 522 (d) of the Federal Crop Insurance Act to develop and implement risk management tools for producers of agricultural commodities through partnership agreements.

DATES: Written comments on this notice will be accepted until close of business, July 6, 2009.

ADDRESSES: Interested persons are invited to submit written comments to Virginia Guzman, United States Department of Agriculture (USDA), Non-Insurance Programs Branch, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133. Written comments may also be submitted electronically to: RMANIP.PRA@rma.usda.gov.

FOR FURTHER INFORMATION CONTACT: Virginia Guzman at the Kansas City, MO address listed above, telephone (816) 926-6343.

SUPPLEMENTARY INFORMATION:

Title: Florida Agricultural Workers Survey.

OMB Number: 0563-NEW.

Type of Request: New Information Collection.

Abstract: The Risk Management Agency intends to collect information for purposes of the development of non-

insurance risk management tools. Information collection for this study is required for the purpose of collecting employment, demographic, and occupational health and injury data on hired specialty crop farm workers in Florida. The purpose of this research project is to develop risk management tools to analyze producer risks associated with the employment of seasonal labor in Florida specialty crops. The risk management tool will enable producers to determine the costs and benefits of utilizing different mixes of labor and capital, given changes in wages and the supply of workers. The information collection will be conducted primarily through in-person surveys. Results of this collection will be used to develop the risk management tools. We are asking the Office of Management and Budget (OMB) to approve this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public concerning the information collection activities. These comments will help us:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection information;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g. permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 15 to 75 minutes per response, depending on the persons to be interviewed.

Respondents/Affected Entities: Agricultural Producers and employers, agricultural workers, as well as individuals and organizations involved in education and assistance to agricultural producers, including Cooperative Extension Specialists, government officials, and businesses in the agricultural sector.

Estimated annual number of respondents: 2,049.

Estimated annual number of responses: 1,808.

Estimated total annual burden on respondents: 2,138.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on April 27, 2009.

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9-10124 Filed 5-1-09; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Census of Agriculture Content Test.

DATES: Comments on this notice must be received by July 6, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-0243, by any of the following methods:

- *E-mail:* ombofficer@nass.usda.gov. Include docket number above in the subject line of the message.
- *Fax:* (202) 720-6396.
- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250-2024.

• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250-2024.

FOR FURTHER INFORMATION OR COMMENTS CONTACT: Joseph T. Reilly, Associate

Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: Census of Agriculture Content Test.

OMB Control Number: 0535-0243.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The census of agriculture conducted every five years is the primary source of statistics concerning the nation's agricultural industry and provides the only basis of consistent, comparable data. The Census of Agriculture is required by law under the Census of Agriculture Act of 1997, Public Law 105-113, 7 U.S.C. 2204g. The 2007 census is available on the Web at <http://www.agcensus.usda.gov/>.

The purpose of this content test is to evaluate factors impacting the census program: questionnaire format and design, new items, changes to question wording and location, respondent burden, ease of completion, and processing methodology such as edit and summary. Results will be studied in preparation for the 2012 Census of Agriculture.

Development of the test questionnaire version will come from evaluation of the 2007 Census of Agriculture, testing panels, and focus groups. NASS will also meet with other USDA and Federal agencies and selected State Departments of Agriculture to glean information on data uses and justification for county data.

The test will be nation-wide, excluding Alaska and Hawaii. A random sample of approximately 40,000 will be mailed questionnaires; half will get the old version for control and half will get the test format. Non-respondents will receive a follow-up contact. Summarization of findings will be presented to the Advisory Committee on Agricultural Statistics.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 60 minutes per positive response, 10 minutes per screen-out, and 2 minutes per refusal.

Respondents: Farm and ranch operators.

Estimated Number of Respondents: 40,000.

Estimated Total Annual Burden on Respondents: 22,000 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690-2388.

Comments: Comments are invited on: (a) Whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological or other forms of information collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 7, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9-10125 Filed 5-1-09; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Forest Service

Annual List of Newspapers To Be Used by the Alaska Region for Publication of Legal Notices of Proposed Actions and Legal Notices of Decisions Subject to Administrative Appeal Under 36 CFR Part 215

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Alaska Region will use to publish legal notice of all decisions subject to appeal under 36 CFR part 215 and to publish legal notices for public comment on actions subject to the notice and comment provisions of 36 CFR 215, as updated on June 4, 2003. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notice of actions subject to public comment and decisions subject to appeal under 36 CFR 215, thereby allowing them to receive constructive notice of a decision or proposed action, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers begins on May 1, 2009. This list of newspapers will remain in effect until it is superseded by a new list, published in the **Federal Register**.

ADDRESSES: Robin Dale, Alaska Region Group Leader for Appeals, Litigation and FOIA; Forest Service, Alaska Region; P.O. Box 21628; Juneau, Alaska 99802-1628.

FOR FURTHER INFORMATION CONTACT:

Robin Dale; Alaska Region Group Leader for Appeals, Litigation and FOIA; (907) 586-9344.

SUPPLEMENTARY INFORMATION: This notice provides the list of newspapers that Responsible Officials in the Alaska Region will use to give notice of decisions subject to notice, comment, and appeal under 36 CFR part 215. The timeframe for comment on a proposed action shall be based on the date of publication of the legal notice of the proposed action in the newspapers of record identified in this notice. The timeframe for appeal under 36 CFR part 215 shall be based on the date of publication of the legal notice of the decision in the newspaper of record identified in this notice. The newspapers to be used for giving notice of Forest Service decisions in the Alaska Region are as follows:

Alaska Regional Office

Decisions of the Alaska Regional Forester: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska; and the Anchorage Daily News, published daily in Anchorage, Alaska.

Chugach National Forest

Decisions of the Forest Supervisor and the Glacier and Seward District Rangers: Anchorage Daily News, published daily in Anchorage, Alaska.

Decisions of the Cordova District Ranger: Cordova Times, published weekly in Cordova, Alaska.

Tongass National Forest

Decisions of the Forest Supervisor and the Craig, Ketchikan/Misty, and Thorne Bay District Rangers: Ketchikan Daily News, published daily except Sundays and official holidays in Ketchikan, Alaska.

Decisions of the Admiralty Island National Monument Ranger, the Juneau District Ranger, the Hoonah District Ranger, and the Yakutat District Ranger: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Petersburg District Ranger: Petersburg Pilot, published weekly in Petersburg, Alaska.

Decisions of the Sitka District Ranger: Daily Sitka Sentinel, published daily except Saturday, Sunday, and official holidays in Sitka, Alaska.

Decisions of the Wrangell District Ranger: Wrangell Sentinel, published weekly in Wrangell, Alaska.

Supplemental notices may be published in any newspaper, but the time frames for making comments or filing appeals will be calculated based upon the date that notices are published in the newspapers of record listed in this notice.

Dated: April 21, 2009.

Denny Bschor,
Regional Forester.

[FR Doc. E9-10045 Filed 5-1-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting six new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the periods of review (PORs) of November 1, 2007 through April 30, 2008 and November 1, 2007 through June 9, 2008. As discussed below, we preliminarily determine that sales have been made in the United States at prices below normal value (NV) with respect to certain exporters who participated fully and have demonstrated their eligibility for a separate rate in the NSRs. The NSRs for Jinxiang Tianheng Trade Co., Ltd. and Shandong Jinxiang Zhengyang Import & Export Co., Ltd. continue to be preliminarily rescinded. The dumping margins are set forth in the "Preliminary Results of the Reviews" section below. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*. We invite interested parties to comment on these preliminary results. See "Comments" section below.

DATES: *Effective Date:* May 4, 2009.

FOR FURTHER INFORMATION CONTACT: Toni Page, Elfi Blum, or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1398, (202) 482-0197, or (202) 482-1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 22, 27, and 30, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), the Department received NSR requests from Jinxiang Hejia Co., Ltd (Hejia), Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jinxiang Tianheng Trade Co., Ltd (Tianheng), Juye Homestead Fruits and Vegetables Co. Ltd. (Juye Homestead), Chengwu County Yuanxing Industry & Commerce Co., Ltd. (Chengwu), and Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang). On June 30, 2008, the Department initiated NSRs for all six companies. See *Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 73 FR 38979 (published July 8, 2008).

On June 30, 2008 and January 2, 2009, the Department placed copies of CBP documents on the record of the NSRs pertaining to each shipment of garlic from the PRC exported to the United States by these six companies during the POR.¹ On July 29, 2008, we issued a memorandum extending the end of the POR from April 30, 2008 to June 9, 2008, so as to capture entries that entered the U.S. market after April 30, 2008. See Memorandum to the File from Martha Douthitt Re: Expansion of the Period of Review in the New Shipper Review of Fresh Garlic from the People's Republic of China (July 29, 2008), on file in the Central Records Unit (CRU), room 1117 of the main Commerce building.

Since the initiation of these reviews, the Department issued original and supplemental questionnaires to Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang. All six companies responded to the Department's questionnaires in a timely manner. On August 20, 2008, the Department sent interested parties a letter requesting comments on the surrogate country selection and information pertaining to valuing factors of production. See Letter to Interested Parties from the Department Re: New Shipper Reviews of Fresh Garlic from

¹ See the Memorandum from Jun Jack Zhao Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Data (June 30, 2008) and the Memorandum from Toni Page Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Entry Documents (January 2, 2009).

the People's Republic of China ("PRC") (August 20, 2008). On November 12, 2008, Zhengyang submitted comments on the surrogate country selection and information pertaining to valuing factors of production. See Letter to the Department from Zhengyang Re: Surrogate Value Submission: Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07-04/30/08 (November 12, 2008) (Zhengyang's Surrogate Value Data). The Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch LLC, the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, petitioners) also submitted comments regarding surrogate values for these NSRs. See Letter to the Department from Petitioners Re: 14th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (November 26, 2008) (Petitioners' Surrogate Value Data). In addition, Zhengyang submitted comments rebutting Petitioners' Surrogate Value Data submission. See Letter to the Department from Zhengyang Re: Rebuttal Documents on Surrogate Value Submission: Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07-04/30/08 (December 8, 2008) (Zhengyang's Rebuttal Surrogate Value Data). All submitted comments are on file in the CRU. No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

On December 3, 2008, the Department extended the preliminary results of these NSRs to no later than April 27, 2009. See *Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews*, 73 FR 73638 (December 3, 2008). On March 18, 2009, the Department notified all interested parties of its intent to preliminarily rescind the NSRs for Tianheng and Zhengyang. See Memorandum from Barbara E. Tillman Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Jinxiang Tianheng Trade Co. and Intent to Preliminarily Rescind Jinxiang Tianheng Trade Co.'s New Shipper Review (March 18, 2009) and Memorandum from Barbara E. Tillman Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Intent to Preliminarily Rescind Shandong

Jinxiang Zhengyang Import & Export Co., Ltd.'s New Shipper Review (March 18, 2009). On April 1, 2009, we received comments from Tianheng and Zhengyang. See Letter to the Department from Tianheng Re: Response to Bona Fides Memorandum of March 18, 2009; Jinxiang Tianheng Trade Co., Ltd.; Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07–04/30/08; and Letter to the Department from Zhengyang Re: Response to Bona Fides Memorandum of March 18, 2009; Shandong Jinxiang Zhengyang Import and Export Co., Ltd.; Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07–04/30/08. The Department is reviewing the comments and timely information submitted by all interested parties on this issue. The Department intends to address these comments and factual information in a subsequent memorandum that will be issued prior to the final results of these NSRs.

Scope of the Order

The products covered by this order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must

be accompanied by declarations to CBP to that effect.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China (Sparklers)*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate status test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing,

and output decision-making process at the individual firm level.²

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Throughout the course of this proceeding, Hejia, Juye Homestead, Chenglong, and Chengwu have each placed a number of documents on the record to demonstrate absence of *de jure* control including business licenses, financial statements, and narrative information regarding government laws and regulations on corporate ownership, and the companies' operations and selection of management.³ In addition, Hejia, Juye Homestead, Chenglong, and Chengwu have each placed on the record the "Foreign Trade Law of the People's Republic of China", the "Company Law of the People's Republic of China", and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 102, 105 (January 3, 2006), unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 37715, 37716 (July 11, 2007). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control of Hejia, Juye Homestead, Chenglong, and Chengwu based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record

² See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

³ On March 18, 2009, the Department preliminarily rescinded the NSRs of Tianheng and Zhengyang. As such, we have not conducted a separate rate analysis of either company.

decentralizing control over the respondent.

B. Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 59 FR at 22586–87. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The absence of de facto governmental control over exports is based on whether a company: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The Department conducted a separate-rates analysis for each new shipper. In Hejia's, Juye Homestead's, Chenglong's, and Chengwu's questionnaire responses, each new shipper submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Each new shipper sets its own export prices independent of the government and without the approval of a government authority; (2) each new shipper retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each new shipper has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on each new shipper's use of export revenues. The questionnaire responses of the new shippers do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information

indicating the existence of government control. Therefore, the Department preliminarily finds that Hejia, Juye Homestead, Chenglong, and Chengwu have each established, *prima facie*, that they qualify for separate rates status under the criteria established by *Silicon Carbide* and *Sparklers*.

Bona Fide Analysis

Consistent with Department practice, we examined the *bona fide* nature of the new shipper sales at issue. In evaluating whether or not a sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (*TTPC*). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.). Also, in *TTPC*, the court affirmed the Department's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*TTPC*, 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC*, 366 F. Supp. 2d at 1263. Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a NSR sale so that a respondent does not unfairly benefit from an atypical sale, and obtain a lower dumping margin than the producer's usual commercial practice would dictate.

Tianheng: On March 18, 2009, we preliminarily concluded that the sale made by Tianheng during the POR was not a *bona fide* commercial transaction and thus notified parties of our intent to rescind the NSR for this company. The Department came to this conclusion based on the totality of circumstances, namely: (a) the atypical nature of

Tianheng's POR sale; and (b) other evidence of a non-*bona fide* transaction. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision to rescind was set forth in the Memorandum from Barbara E. Tillman Re: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China* ("PRC"): Jinxiang Tianheng Trade Co. and Intent to Preliminarily Rescind Jinxiang Tianheng Trade Co.'s New Shipper Review (March 18, 2009) (*Tianheng Bona Fides Memorandum*).

On April 1, 2009, Tianheng submitted comments and factual information addressing the Department's *bona fides* analysis. The Department intends to address these comments and factual information in a subsequent memorandum that will be issued prior to the final results.

Zhengyang: On March 18, 2009, we preliminarily concluded that the sale made by Zhengyang during the POR was not a *bona fide* commercial transaction and thus preliminarily rescinded the NSR for this company. The Department came to this conclusion based on the totality of circumstances, namely: (a) the atypical nature of Zhengyang's POR sale; and (b) other evidence of a non-*bona fide* transaction. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision to rescind is set forth in the Memorandum from Barbara E. Tillman Re: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China* ("PRC"): Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Intent to Preliminarily Rescind Shandong Jinxiang Zhengyang Import & Export Co., Ltd.'s New Shipper Review (March 18, 2009) (*Zhengyang Bona Fides Memorandum*). On April 1, 2009, Zhengyang submitted comments and factual information addressing the Department's *bona fides* analysis. The Department intends to address these comments and factual information in a subsequent memorandum issued prior to the final results.

Hejia: We preliminarily find that the sale made by Hejia during the POR was a *bona fide* commercial transaction based on the totality of circumstances, namely: (1) Neither Hejia nor its customer incurred any extraordinary expenses arising from the transaction; (2) the sale was made between

unaffiliated parties at arm's length; and (3) the timing of the sale does not indicate that this sale was not *bona fide*. However, we note that the Department will continue to examine all aspects of Hejia's POR sale including whether it is atypical, and, as such, not indicative of what its future sales may be. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Barbara E. Tillman Re: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC")*: Shandong Jinxiang Hejia Co., Ltd. New Shipper Review (April 27, 2009) (Hejia *Bona Fides* Memorandum). Accordingly, we will continue to examine the *bona fides* of Hejia's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Hejia's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (see the "Separate Rates" section above) and the Department's preliminary determination that Hejia was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Hejia has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Hejia's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

Juye Homestead: We preliminarily find that the sale made by Juye Homestead was a *bona fide* commercial transaction. Specifically, we find that: (1) The price of the sale was within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) neither Juye Homestead nor its customer incurred any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide*. However, we note that there is certain evidence on the record that suggests that the *bona fides* of Juye Homestead's sale is not definitive. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Jun Jack Zhao Re: *Bona Fide Nature of the Sale in the*

Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Juye Homestead Fruits and Vegetables Co., Ltd. (April 27, 2009). Accordingly, we will continue to examine the *bona fides* of Juye Homestead's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Juye Homestead's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (see the "Separate Rates" section above) and the Department's determination that Juye Homestead was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Juye Homestead has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Juye Homestead's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

Chenglong: We preliminarily find that the new shipper sale made by Chenglong was a *bona fide* commercial transaction. Specifically, we found that: (1) The price of the sale was within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) neither Chenglong nor its customer incurred any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide*. However, we note that certain evidence on the record suggests that the *bona fides* of Chenglong's sale is not definitive. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Jun Jack Zhao Re: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC")*: Weifang Chenglong Import & Export Co., Ltd. (April 27, 2009). Accordingly, we will continue to examine the *bona fides* of Chenglong's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Chenglong's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (see the "Separate Rates" section above) and the Department's determination that Chenglong was not affiliated with any exporter or producer that had previously shipped subject

merchandise to the United States, we preliminarily determine that Chenglong has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Chenglong's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

Chengwu: We preliminarily find that the new shipper sale made by Chengwu was a *bona fide* commercial transaction. Specifically, we found that: (1) The price of the sale was within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) neither Chengwu nor its customer incurred any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide*. However, we note that there is certain evidence on the record that suggests the *bona fides* of Chengwu's sale is not definitive. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Toni Page Re: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC")*: Chengwu County Yuanxiang Industry & Commerce Co., Ltd. (April 27, 2009). Accordingly, we will continue to examine the *bona fides* of Chengwu's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Chengwu's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (see the "Separate Rates" section above) and the Department's determination that Chengwu was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Chengwu has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Chengwu's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be

appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (*Policy Bulletin*).

As discussed in the "Non-Market Economy Country Status" section above, the Department considers the PRC to be an NME country. Pursuant to section 773(c)(4) of the Act, the Department determined that India, Colombia, Indonesia, the Philippines, and Thailand are countries comparable to the PRC in terms of economic development. *See the Memorandum to All Interested Parties Re: New Shipper Reviews of Fresh Garlic from the People's Republic of China ("PRC")* (August 20, 2008) at Attachment 1. Also in accordance with section 773(c)(4) of the Act, the Department has found that India is a significant producer of comparable merchandise. Moreover, the Department finds India to be a reliable source for surrogate values because India is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments of this proceeding, and the only surrogate value data submitted on the record are from Indian sources. Given the above facts, the Department has selected India as the primary surrogate country for this review. *See Letter to All Interested Parties Re: New Shipper Reviews of Fresh Garlic from the People's Republic of China ("PRC")* at Attachment 1 (August 20, 2008). The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum from Toni Page Re: Preliminary Results of the 2007–2008 New Shipper Reviews of Fresh Garlic from the People's Republic of China: Surrogate Values (April 27, 2009) (*Surrogate Values Memorandum*).

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price for sales to the United States for Hejia,

Juye Homestead, Chenglong, and Chengwu because each company made its sale to an unaffiliated party before the date of importation and the use of constructed export prices was not otherwise warranted. We calculated each company's export price based on its price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting price to unaffiliated purchasers the expenses for foreign inland freight, international freight, brokerage and handling, marine insurance, warehousing, and U.S. customs duties. For the expenses that were either provided by an NME vendor or paid for using an NME currency, we used surrogate values as appropriate. *See the "Factor Valuations" section below for details regarding the surrogate values for movement expenses.*

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department calculates NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. However, there are circumstances in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (PVA) (citing to *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 31204 (June 11, 2001)).

For the final results of certain prior administrative reviews (ARs) and NSRs (*i.e., Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh*

Administrative Review and New Shipper Reviews, 71 FR 71510 (December 11, 2006) (unchanged in the final results) (*11th AR and NSRs*); *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review*, 73 FR 34251 (June 17, 2008) (*12th AR*), and *Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews*, 73 FR 56550 (September 29, 2008) (*12th NSR*), the Department found that garlic industry producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information. *See the Memorandum from Toni Page Re: New Shipper Reviews of Fresh Garlic from the People's Republic of China—Intermediate Methodology Source Documents* (April 27, 2009) (*Intermediate Input Methodology Source Documents*). In the *11th AR and NSRs*, the Department also stated that "should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV." *See 11th AR and NSRs* at 71520. In the course of these reviews, one company, Tianheng, reported its growing FOPs.⁴ (Hejia, Juye Homestead, Chenglong, Zhengyang, and Chengwu did not report FOPs related to growing whole garlic bulbs.) As such, for the reasons outlined in Memorandum from Toni Page Re: 2007–2008 New Shipper Review of Fresh Garlic from the People's Republic of China: Intermediate Input Methodology (April 27, 2009) (*Intermediate Input Methodology Memorandum*), the Department is applying an "intermediate-product valuation methodology" to the NSR respondents for which we are calculating an antidumping duty margin in these preliminary results. Using this methodology, the Department calculated NV by starting with a surrogate value for the garlic bulb (*i.e., the "intermediate product"*), adjusting for yield losses during the processing stages, and adding the respondents' processing costs,

⁴ On March 18, 2009, the Department preliminarily rescinded the NSR of Tianheng. As such, we have not conducted an analysis of the growing FOPs that Tianheng reported.

which were calculated using their reported usage rates for processing fresh garlic. *See Intermediate Input Methodology Memorandum.*

2. Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available surrogate values in India. In selecting the surrogate values, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. The Department calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port in accordance with the decision in *Sigma Corporation v. United States*, 117 F.3d 1401 (Fed. Cir. 1997) (*Sigma*). For more information regarding the Department's valuation for the various FOPs, *see Surrogate Values Memorandum.*

Garlic Bulb Valuation

The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR. *See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

The Department has applied an intermediate input methodology for respondents. Therefore, we sought to identify the best available surrogate value for the garlic bulb input to production, as opposed to finding surrogate values for the steps involved in planting, growing, and harvesting raw garlic (such as seeds, water, fertilizer, etc.). *See* Petitioners' Surrogate Value Data at 2; *see also Surrogate Values Memorandum.* For the preliminary results of these reviews, we find that data from the Azadpur APMC's "Market Information Bulletin" is the most appropriate information available to value the respondents' garlic bulb input.

In their FOP databases, respondents reported garlic bulb input size ranges for each type of garlic produced and sold to

the U.S. during the POR. Respondents, with the exception of Hejia, reported garlic bulb input sizes ranging between 45 mm and 65 mm. Consistent with the final results of the 12th administrative review, the Department continues to find that garlic bulb sizes that range from 55 mm and above are Grade Super-A and garlic bulb sizes that range between 40 mm and 55 mm are Grade A and Grade Super-A. *See Surrogate Values Memorandum.* Therefore, for these preliminary results, for respondents other than Hejia, we have used Grade Super-A values when respondents have reported bulb input sizes that range from 55 mm and above, and an average of Grade A and Super-A values when they have reported bulb input sizes that are in ranges from 40 mm to 55 mm. To calculate the surrogate value for garlic bulbs, we first averaged all data points from November 1, 2007 to April 30, 2008 for: (1) Grade Super-A; and (2) Grade A. We then subtracted a 7 percent fee (6 percent commission fee plus 1 percent market fee) charged on transactions at the Azadpur APMC from the Grade A and Grade Super-A averages. *See Surrogate Values Memorandum.*

Garlic Bulb Valuation for Hejia

Hejia has submitted information on the record indicating that the garlic it sold, and the garlic bulb input thereof, possessed physical characteristics which significantly distinguish it from the Grade A and Super Grade A garlic on which we rely to value garlic bulb inputs. As such, neither Grade A nor Super Grade A garlic appears to be an appropriate basis from which to derive a surrogate value for the bulb input used by Hejia. Moreover, there is no other appropriate bulb surrogate value information on the record of this review. Thus, for these preliminary results, we have determined to use an FOB sales offer from Sundaram Overseas Operations (SOO), an Indian trading company, as the basis for deriving NV. SOO's sales offer appears to be an Indian export price for a whole garlic product that is physically similar to the product sold by Hejia. However, we have incomplete information regarding the FOB sales offer made by SOO. As such, for the purposes of these preliminary results, we are making the following assumptions: (1) SOO acted only as a trading company and did not further process the garlic at issue; and (2) the processing FOPs for the garlic at issue are similar to the processing FOPs of other whole garlic subject to these NSRs. Therefore, we adjusted SOO's price by removing the profit, SG&A, and overhead expenses associated with the

activities of an Indian trading company. As such, the resulting NV will only reflect the costs and profit associated with processing whole garlic. *See Surrogate Values Memorandum.*

The Department is requesting comments and factual information regarding the appropriate surrogate value to use in calculating NV for Hejia for purposes of the final results of review. Due to the unusual nature of this valuation and calculation, regardless of whether there is new factual information on the record after issuance of these preliminary results, the Department will continue to consider the appropriateness of this calculation for purposes of the final results of review. Since much of our analysis regarding Hejia's garlic and the garlic bulb input thereof has been treated as business proprietary information, a full discussion of the bases for calculating an appropriate surrogate value for Hejia's garlic bulb input is set forth in the *Surrogate Values Memorandum.*

Financial Ratios

Petitioners and Zhengyang submitted comments and factual information regarding surrogate financial ratios. *See* Petitioners' Surrogate Value Data, Zhengyang's Surrogate Value Data, and Zhengyang's Rebuttal Surrogate Value Data submissions. After analyzing these comments and factual information, the Department has determined that it is appropriate to include the financial statements of additional Indian companies in the calculation of the financial ratios used to value overhead expenses, selling expenses, general expenses, and profits for the respondents. Specifically, the Department will calculate financial ratios using a simple average of financial data from three Indian processors of tea and/or other agricultural products. Using an average of these three companies' data will allow us to calculate financial ratios that better reflect the broader experience of the surrogate industry. *See Surrogate Values Memorandum.*

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See* <<http://www.ia.ita.doc.gov/exchange/index.html>>.

Verification

Following the publication of these preliminary results, we intend to verify,

as provided in section 782(i)(3) of the Act, the questionnaire responses of these new shippers. At verification, we will use standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and

financial records, and the selection of original source documentation containing relevant information. We will prepare verification reports outlining our verification results and place these reports on file in the CRU.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily find that the following margins exist for the period November 1, 2007 through June 9, 2008:

FRESH GARLIC FROM THE PRC

Exporter/manufacturer	Weighted-average margin (percent)
Exported by Weifang Chenglong Import & Export Co., Ltd. and Produced by Jinxiang County Jichao Farm Business Co., Ltd	39.85
Exported and Produced by Juye Homestead Fruits and Vegetables Co., Ltd	99.78
Exported and Produced Chengwu County Yuanxiang Industry & Commerce, Ltd	134.90
Exported and Produced by Jinxiang Hejia Co., Ltd	70.38

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Consistent with the final results of the 12th NSR, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR. *See 12th NSR* at 56552. Specifically, we will divide the total dumping margins for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of these reviews.

Cash Deposit Requirements

Consistent with the final results of the 12th NSR, we will establish and collect a per-kilogram cash-deposit amount which will be equivalent to the company-specific dumping margin published in the final results of these reviews. Specifically, the following cash deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(1) of the Act: (1) For subject merchandise produced and exported by Juye Homestead, Hejia or Chengwu, the cash deposit rates will be the rates determined in the final results

of the new shipper reviews; (2) for subject merchandise exported by but not produced by Juye Homestead, exported but not produced by Hejia, or exported by but not produced by Chengwu, the cash deposit rate will be the PRC-wide rate; (3) for subject merchandise produced by Jinxiang County Jichao Farm Business Co., Ltd. (Jichao) and exported by Chenglong, the cash deposit rates will be the rates determined in the final results of the new shipper reviews; (4) for subject merchandise exported by Chenglong but not produced by Jichao, the cash deposit rates will be the PRC-wide rate; and (5) for subject merchandise produced or exported by Tianheng or Zhengyang, the cash deposit rate will be the PRC-wide rate. These requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose the calculations used in our analysis to parties to these proceedings not later than ten days after the date of public announcement, or if there is no public announcement within five days of the date of publication of this notice. *See 19 CFR 351.224(b)*.

Comments

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See 19 CFR 351.309(c)(ii)*. Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the

arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.*, WordPerfect, Microsoft Word, Adobe Acrobat, etc.). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See 19 CFR 351.310(c)*. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 90 days after these preliminary results are issued, unless the final results are extended. *See 19 CFR 351.214(i)*.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h).

Dated: April 27, 2009.

Ronald M. Lorentzen,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 26, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09-013. Applicant: Princeton University, Olden Street, Princeton, NJ 08544. Instrument: Electron Beam Evaporator. Manufacturer: Plassys, France. Intended Use: The instrument will be used in the study of superconducting quantum circuits, ultimately directed towards superconducting quantum computation. The evaporator will be used to make low-defect aluminum Josephson junctions, a necessary component of all quantum bits. A unique feature of this instrument is that it offers full stage rotation, in-situ angle control for bilayer Josephson junction fabrication and controlled oxidation. Stage rotation is necessary to fabricated Josephson junctions in a single deposition process, the only way of fabricating devices with long coherence. Justification for Duty-Free Entry: No instruments of the same general category as the foreign instrument begin manufactured in the United States. Application accepted by Commissioner of Customs: April 6, 2009.

Dated: April 27, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9-10175 Filed 5-1-09; 8:45 am]

BILLING CODE 3510-DS-S

U.S. DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18-2009]

Proposed Foreign-Trade Zone, Kern County, California, Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Kern Department of Airports to establish a general-purpose foreign-trade zone at sites in Kern County, California. Meadows Field Airport in Kern County has been designated by U.S. Customs and Border Protection as a user fee airport. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 28, 2009. The applicant is authorized to make the proposal under the California Government Code, Sections 6300-6305.

The proposed zone would consist of two sites located in Kern County, California. They are as follows: *Site 1* (231 acres, 3 parcels) - Parcel 1A (200 acres), within the 1,332-acre Meadow Field Airport complex (includes an aviation fuel depot), 1401 Skyway Drive, Bakersfield; Parcel 1B (1 acre) - at the P.R.I.M.E. (Pacific Rim & India Multinational Enterprises Corporation) warehouse facility, 2341 Cepheus Court, Bakersfield; and, Parcel 1C (30 acres) - located at the 110-acre Wingsport Industrial Park, Merle Haggard & Wings Way, Bakersfield. Parcels 1B and 1C are adjacent to the Meadows Field Airport. Parcel 1A is owned by Kern County. Parcels 1B and 1C are owned by private owners; and, *Site 2* (167 acres) - located at the 1,450-acre Tejon Industrial Complex, intersection of I-5 and Highway 99, Lebec. Site 2 will incorporate parcels that have previously been part of Site 2 of FTZ 202 and of Subzone 202D within the Tejon Industrial Complex.

The application indicates a need for zone services in Kern County, California. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ staff is designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public

hearing on May 27, 2009, 9 a.m., at the International Terminal Building at Meadows Field Airport, 1401 Skyway Drive, Bakersfield, California.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is July 6, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 20, 2009).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230-0002, and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Kathleen Boyce at Kathleen_Boyce@ita.doc.gov or (202) 482-1346.

Dated: April 28, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9-10182 Filed 5-1-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 090424759-9760-01]

RIN 0648-ZB55

Ocean Education Grants for AZA Aquariums

AGENCY: Office of Education (OED), Office of the Under Secretary (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: The NOAA Office of Education (OEd) is issuing a request for applications to support education projects designed to engage the public in activities that increase ocean and/or climate literacy and the adoption of a stewardship ethic. Funded projects will be between one and five years in duration and will support ocean education projects led by eligible applicants. Eligible applicants are only 501(c)(3) non-profit organizations that are either aquariums accredited by the Association of Zoos and Aquariums (AZA) or have a legally sanctioned

affiliation with an AZA-accredited aquarium. There is a required 50 percent non-Federal cost-share of the total Federal request, *e.g.*, if the Federal request is \$1,000,000, the applicant is required to submit a non-Federal match equal to \$500,000. This solicitation meets NOAA's mission goal to protect, restore, and manage the use of coastal and ocean resources through an ecosystem approach to management. It is anticipated that recommendations for funding under this announcement will be made by August 30, 2009, and that projects funded under this announcement will have a start date no earlier than October 1, 2009. **Note:** A PDF version of this announcement is available at http://www.oesd.noaa.gov/funding_opps.html.

DATES: The deadline for applications is 5 p.m. EDT on June 9, 2009.

Applications submitted through Grants.gov are automatically date/time stamped when they are validated and submitted to the Agency. Paper applications must be provided to an expedited shipping service by the deadline and proof of this must be provided by the applicant.

Please Note: When submitting through Grants.gov, you will receive 2 e-mails. An initial e-mail will be sent to confirm your attempt to submit a proposal. This is NOT a confirmation of acceptance of your application. It may take Grants.gov up to two (2) business days to validate or reject the application and send you a second e-mail. Please keep this in mind in developing your submission timeline.

ADDRESSES: The application package is available through Grants.gov (<http://www.grants.gov>). If an applicant does not have Internet access, please contact one of the Program Officers, Carrie McDougall or Sarah Schoedinger, for information on how to submit an application. See Section VII. Agency Contacts of the federal funding opportunity (FFO) announcement for the Program Officers' contact information. Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks and involves multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide you intend to apply, even if you are not yet ready to submit your application. If submitting a collaborative project (see section B.1. below) each submitting institution has to be registered in Grants.gov. If an applicant has problems downloading the application forms from Grants.gov, contact Grants.gov Customer Support at 1-800-518-4726 or support@grants.gov.

FOR FURTHER INFORMATION CONTACT:

Please visit the OED Web site for further information at http://www.oesd.noaa.gov/funding_opps.html or contact the Program Officers: Carrie McDougall at 202-482-0875 or carrie.mcdougall@noaa.gov; or Sarah Schoedinger at 704-370-3528 or sarah.schoedinger@noaa.gov. For those applicants without Internet access, hard copies of referenced documents may be requested from NOAA's Office of Education by contacting Carrie McDougall at 202-482-0875 or Sarah Schoedinger at 704-370-3528 or sending a letter to: Carrie McDougall, Dept. of Commerce, NOAA Office of Education, 1401 Constitution Avenue, NW., Room 6863, Washington, DC 20230; Telephone: 202-482-0875.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration (NOAA) provides support to improve environmental literacy among our Nation's citizens and promote a diverse workforce in ocean, coastal, Great Lakes, weather, and climate sciences in order to encourage stewardship and increase informed decisionmaking for the Nation. NOAA defines an environmentally literate person as someone who has a fundamental understanding of the systems of the natural world, the relationships and interactions between the living and non-living environment, and the ability to understand and utilize scientific evidence to make informed decisions regarding environmental issues. Improving environmental literacy and the public's understanding of how our Nation's natural resources are managed and the importance of these resources is critical to meeting the Agency's stewardship mission. To address this mission, NOAA engages in informal science education activities at local, state, regional, and national levels, with particular emphasis on reaching communities that are underrepresented in Science, Technology, Engineering and Mathematics (STEM) fields. The goal of this funding program is to support projects that engage the public in educational activities that increase ocean and/or climate literacy and the adoption of a stewardship ethic. This program supports Goal 1 of NOAA's Education Strategic Plan (<http://www.education.noaa.gov/plan>), specifically Focusing on:

- *Outcome 1.2:* Educators understand and use environmental literacy principles.
- *Outcome 1.3:* Educators, students, and/or the public collect and use ocean, coastal, Great Lakes, weather, and

climate data in inquiry and evidence-based activities.

- *Outcome 1.4:* Lifelong learners are provided with informal science education opportunities focused on ocean, coastal, Great Lakes, weather, and climate topics. This program also supports the President's priorities to create a transparent and connected democracy and improve America's competitiveness by preparing our Nation's children for the 21st Century economy by: Making math and science education a national priority; increasing the number of science and math graduates; expanding the number of high-quality afterschool opportunities; and investing in climate-friendly energy development and deployment (<http://www.whitehouse.gov/agenda/>).

In keeping with Outcome 1.1 of NOAA's Education Strategic Plan highly successful projects will employ effective educational methods that promote stewardship and associated environmental problem-solving. Project activities should be based on established best practices. In particular, the four key recommendations in the National Research Council report on "Learning Science in Informal Environments: People, Places, and Pursuits" (Bell, *et al.*, 2009), excerpted below, incorporate such best practices and should be utilized as appropriate:

Recommendation 1: Exhibit and program designers should create informal environments for science learning according to the following principles. Informal environments should:

- Be designed with specific learning goals in mind (*e.g.*, the strands of science learning).
- Be interactive.
- Provide multiple ways for learners to engage with concepts, practices, and phenomena within a particular setting.
- Facilitate science learning across multiple settings.
- Prompt and support participants to interpret their learning experiences in light of relevant prior knowledge, experiences, and interests.
- Support and encourage learners to extend their learning over time.

Recommendation 2: From their inception, informal environments for science learning should be developed through community-educator partnerships and whenever possible should be rooted in scientific problems and ideas that are consequential for community members.

Recommendation 3: Educational tools and materials should be developed through iterative processes involving learners, educators, designers, and experts in science, including the

sciences of human learning and development.

Recommendation 4: Front-line staff should actively integrate questions, everyday language, ideas, concerns, worldviews, and histories, both their own and those of diverse learners. To do so they will need support opportunities to develop cultural competence, and to learn with and about the groups they want to serve.

Proposed projects may include (but are not limited to) the following types of activities: Outdoor/Hands-on Experiential Learning; citizen science programs; civic engagement programs (as discussed below); Integration of emerging and advanced educational technologies (as discussed below); demonstration projects promoting conservation of energy and other natural resources; educational games; youth and community programs; and professional development of informal science education staff. In addition, this program supports the development of permanent and traveling exhibitions and films, television and radio series. These categories of activities (exhibitions, films, television, and radio series) should play a supporting role in the proposed educational projects, rather than be the sole focus of the project.

Civic Engagement Projects: NOAA is specifically interested in experimental programs involving civic engagement activities surrounding locally significant environmental change and hazard resilience. Because aquariums are recognized as places where visitors are prompted “to reconsider their role in environmental problems and conservation action, and to see themselves as part of the solution,” (Falk *et al.*, 2007), aquariums provide a unique learning setting that allows them to serve as a connector between their communities and NOAA resources. Civic engagement programs supported by this grant opportunity should enable aquariums to “seek out issues related to science and society where the voices of citizens should be heard and ensure that dialogue occurs” (Toronto Declaration, 2008). Successful projects will engage local citizens in public deliberations of major environmental issues affecting their lives and empower them to find solutions for those issues as well as contribute to future deliberations occurring on those issues at regional, state, national and even global levels (see recommendations in “Americans and Climate Change: Closing the Gap Between Science and Action: A Synthesis of Insights and Recommendations from the 2005 Yale Conference on Climate Change,” Abbasi,

2006). These projects will build local capacity for sustained civic engagement on these issues beyond the duration of the project. Specific emphasis should be placed on involving traditionally under-represented communities in civic engagement projects and employing innovative collaborations with other aquariums, other institutions and/or networks of institutions.

Emerging and Advanced Technologies Projects may focus on the use of alternative, emerging or advanced technologies or digital interactive media to reach new audiences, *e.g.*, virtual worlds, You-Tube, social networking tools (Twitter, MySpace, Facebook), webcams, kiosks, and Earth-viewing platforms. Earth-viewing platforms include, but are not limited to, the following: NOAA’s Science On a Sphere, Magic Planet, Omniglobe, PufferSphere, and immersive cave or dome technologies, or virtual globes, such as Google Earth and NASA’s World Wind. Projects involving installations of Science On a Sphere require consultation with John McLaughlin (john.mclaughlin@noaa.gov, 202–482–2893) prior to submission.

Successful projects will exhibit as many of the following characteristics as is relevant and/or feasible:

- Increasing public understanding and appreciation of the interconnectedness of people and the environment, especially with reference to climate change;
- Involving collaborations/partnerships with other aquariums, other types of institutions and/or networks of institutions. Partnerships with science institutions that will be able to provide scientific knowledge and expertise to inform the development of exhibits and/or program content are strongly encouraged. Partnerships with NOAA programs are also encouraged whenever possible. (A summary of NOAA programs and activities sorted by the state or territory in which they are based or focused is available at: <http://www.legislative.noaa.gov/NIYS0107/noaainyourstate.html>);
- Extending the learning experience beyond a single visit to an aquarium or the simple acquisition of knowledge;
- Assisting participants in increasing their conservation behaviors;
- Employing the strategies of the Citizen Science Tool Kit (see <http://www.citizenscience.org>);
- Engaging members of populations traditionally underrepresented in STEM fields and provide appropriate cultural contexts for their learning;

- Addressing, as appropriate, recent findings of the Ocean Project’s 2009 public literacy survey (http://www.theoceanproject.org/ocean_education_grant_program);
 - Aligning activities to principles in “Ocean Literacy: Essential Principles of Ocean Sciences” (http://www.coexploration.org/oceanliteracy/documents/OceanLitConcepts_10.11.05.pdf) and/or “Climate Literacy: The Essential Principles of Climate Science” (<http://www.noaa.gov/climateliteracy.html>);
 - Having clearly stated outcomes/objectives that are measurable and appropriate to the target audience(s) (see Evaluation below for further guidance); and/or
 - Sharing information on project impacts and design with NOAA and the broader environmental education community.
- Target Audiences:**
- Public audiences:** including youth, families, adult learners, and community groups; and
 - Professional audiences:** informal education professionals.

NOAA is supportive of informal education projects that complement formal K–16 education. Toward that end, projects funded through this opportunity shall focus on activities that will occur outside of school.

Project Evaluation: Project activities should be evaluated for their effectiveness in meeting proposed project goals and objectives as well as the goal of the program, which is to engage the public in educational activities that increase ocean and climate literacy and facilitate the adoption of a stewardship ethic. Projects should be based on an existing front-end evaluation/needs assessment and there should be some discussion in the project description of that needs assessment. Plans for formative and summative project evaluations should be well constructed and specific to the project type. For example, projects involving the design of new or modification of existing digital interactive media should consider evaluating the interface design as well as the educational impacts of the proposed project. Discussion of front-end, formative and summative evaluations should be included in both the project description and budget sections. Lastly, potential impact of the project beyond the award period should also be described. Overall, project evaluation should be handled by external professional evaluators or by internal staff who have significant

experience with evaluation and are not otherwise substantively involved with the project. Additionally, some projects may require specialized evaluation expertise, for example, in the evaluation of the interface of digital interactive media. Project evaluation should include assessment of changes in the target audiences' attitudes, knowledge, awareness, and/or behaviors as a result of the activities undertaken. Principal Investigators should consider sharing evaluation results and project impacts through presentations and peer-reviewed publications of relevant professional organizations such as the Association of Zoos and Aquariums (AZA), Association of Science Technology Centers (ASTC), North American Association of Environmental Education (NAAEE), National Marine Educators Association (NMEA), etc. Also, summative evaluation reports should be posted to <http://www.informalscience.org> to further inform the broad field of informal science education about what was learned from the project. It is anticipated that recommendations for funding under this announcement will be made by September 30, 2009 and that projects funded under this announcement will have a start date no earlier than October 1, 2009. Funded projects will be one to five years in duration. This solicitation meets NOAA's Mission Goal to Protect, Restore, and Manage the Use of Coastal and Ocean Resources through an Ecosystem Approach to Management (http://www.ppi.noaa.gov/PPI_Capabilities/Documents/Strategic_Plans/FY09-14_NOAA_Strategic_Plan.pdf).

References Cited

- Abbasi, D., 2006. Americans and Climate Change: Closing the Gap Between Science and Action: A Synthesis of Insights and Recommendations from the 2005 Yale Conference on Climate Change. Yale School of Forestry & Environmental Studies. (http://environment.yale.edu/climate/americans_and_climate_change.pdf)
- Falk, J.H.; Reinhard, E.M.; Vernon, C.L.; Bronnenkant, K.; Deans, N.L.; Heimlich, J.E., 2007. Why Zoos & Aquariums Matter: Assessing the Impact of a Visit. Association of Zoos & Aquariums. Silver Spring, MD. (<http://www.aza.org/ConEd/MIRP/index.html>)
- The Toronto Declaration of the 5th Science Centre World Congress, 2008. (<http://www.5scwc.org/TheTorontoDeclaration/tabid/133/Default.aspx>)
- Bell, P, Lewenstein, B, Shouse, A.W., Feder, M.A. (eds), 2009. Learning Science in Informal Environments: People, Places, and Pursuits. Committee on Learning Science in Informal Environments, A

REPORT OF THE NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, The National Academies Press, Washington, DC.

Electronic Access: The full text of the full Federal funding opportunity announcement for this program can be accessed via the Grants.gov Web site at <http://www.grants.gov>. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full federal funding opportunity announcement. **Statutory Authority:** Authority for this program is provided by the following 33 U.S.C. 893a(a).CFDA: 11.469, Congressionally Identified Awards and Projects. Funding Availability: Approximately \$7,500,000 of total Federal financial assistance is available for Ocean Education Grants for AZA Aquariums. Funding for these projects is provided by Public Law 111-8 FY 2009 Omnibus Appropriations Act. There will be no funding from the Public Law 111-5 American Recovery and Reinvestment Act of 2009. Approximately 5 to 10 awards in the form of grants or cooperative agreements will be made. For Priority 1, the total Federal amount that may be requested from NOAA shall not exceed \$3,000,000 for all years including direct and indirect costs. The minimum Federal amount that must be requested from NOAA for all years for the direct and indirect costs for this priority is \$1,000,000. Applications requesting Federal support from NOAA of more than \$3,000,000 total for all years will not be considered for funding. For Priority 2, the total Federal amount that may be requested from NOAA shall not exceed \$1,000,000 for all years including direct and indirect costs. The minimum Federal amount that must be requested from NOAA for all years for the direct and indirect costs for this priority is \$300,000. Applications requesting Federal support from NOAA of less than \$300,000 total for all years will not be considered for funding. Up to two applications total per institution may be submitted through this funding opportunity, either one application to each priority or two applications to the same priority. Publication of this notice does not oblige DOC/NOAA to award any specific project or to obligate any available funds. If an applicant incurs any costs prior to receiving an award agreement from an authorized NOAA Grants Officer, the applicant would do so solely at one's own risk of such costs not being included under the award.

Eligibility: Eligible applicants are only 501(c)(3) non-profit organizations that

are either (1) aquariums accredited by the Association of Zoos and Aquariums (AZA) or (2) have a legally sanctioned affiliation with an AZA-accredited aquarium. AZA accreditation must be current at the time of submission. **Note:** Non-AZA-accredited aquariums, non-U.S. institutions, and for-profit entities may be partners on applications but cannot be the lead institution. An eligible applicant may submit up to two applications through this funding opportunity, either one application to each priority or two applications to the same priority.

Cost Sharing Requirements

There is a 50 percent required non-Federal cost-share of the total Federal request, e.g., if the Federal request is \$1,000,000, the applicant is required to submit a non-Federal match equal to \$500,000. Applicants are instructed to review the guidance provided in 15 CFR 24.24 related to cost-sharing (http://www.oesd.noaa.gov/fundingopportunities/15CFR_Sec_24_24_match_costshare.pdf) and the related circular pertaining to cost principles (<http://www.whitehouse.gov/omb/circulars/a122/a122.html>). Cost-share or match can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. Federal sources cannot be considered for matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are permitted to combine contributions from multiple non-Federal partners in order to meet the 50% match requirement, as long as such contributions are not being used to match any other funds.

Evaluation and Selection Procedures

The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. Further information about the evaluation criteria and selection factors can be found in the full federal funding opportunity announcement.

Evaluation Criteria for Projects:

(1) *Importance and/or relevance and applicability of proposed project to the program goals (30%):*

This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA's Federal, regional, or local activities. The application should describe how well the proposed project addresses NOAA's stated objectives and priorities. Reviewers will evaluate:

- How well the project addresses the goals and objectives of this funding program;

- How well the project is aligned with NOAA education goals and strategies as described in the NOAA Education Strategic Plan (<http://www.education.noaa.gov/plan>);

- For projects focusing on the ocean as a part of the Earth system, the extent to which the project will infuse the "Ocean Literacy: The Essential Principles of Ocean Sciences" (http://www.coexploration.org/oceanliteracy/documents/OceanLitConcepts_10.11.05.pdf) into the project activities;

- For projects focusing on climate change, the extent to which the project will infuse "Climate Literacy: The Essential Principles of Climate Science" (<http://climate.noaa.gov/climateliteracy>) into the project activities; and

- The extent to which members of traditionally underrepresented groups in Science, Technology, Engineering, and Math (STEM) fields are involved. A listing of groups traditionally underrepresented in STEM fields can be found in the 2008 NSF Science and Engineering Indicators Report at <http://www.nsf.gov/statistics/seind08/c3/c3s1.htm#c3s116>.

(2) *Technical/scientific merit (30%):*

This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. Reviewers will evaluate:

- The completeness and adequacy of detail in the project description including clearly stated goals and measurable objectives;

- The overall technical feasibility of the project, including whether the proposed approach is educationally and technically sound, is based on best practices and/or needs assessments, uses appropriate methods to achieve project outcomes and is likely to be implemented on the scale described;

- The likelihood of meeting milestones and achieving anticipated results in the time proposed;

- The appropriateness of the identified target audience(s) and proposed methods to impact the stated audience(s);

- Whether there is a clear delineation of responsibilities of the project's key personnel and whether there are adequate communication mechanisms in place for coordinating among project partners;

- The value and appropriateness of proposed collaborations;

- The extent to which the project leverages other resources or investments to achieve its objectives;

- The likelihood the project can be sustained beyond the duration of the grant;

- The likelihood the impacts of the project on the target audience will be long-lasting; and

- Whether there are appropriate mechanisms to evaluate the success of the project in meeting the anticipated outcomes.

(3) *Overall Qualifications of Applicants (15%):*

This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. Reviewers will evaluate:

- The qualifications and demonstrated ability within their areas of expertise of the applicants, of key personnel who would receive funds from this program, and of key personnel of the project partners;

- The applicant's previous experience in managing, designing, and implementing educational programs;

- The evaluators' previous experience in managing, designing and implementing evaluations appropriate for the target audiences and proposed activities;

- The likelihood that the participating institution(s) have the appropriate resources to carry out the proposed activities and that applicant(s) have the ability to complete the proposed project successfully;

- The level of collaboration with other programs, minority-serving institutions (MSIs), NOAA entities, or other educational or research institutions; and

- The extent to which all partners are contributing meaningfully to the project, including articulation of activities in letters of commitment.

(4) *Project Costs (15%):*

The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame. Reviewers will evaluate:

- The adequacy of the proposed resources to accomplish the proposed work within the indicated time-frame;

- If there are additional funds that provide additional leverage; and

- The adequacy of detail in the budget narrative to allow an informed determination of how well all costs associated with the project are justified.

(5) *Outreach and Education (10%):*

This criterion ascertains whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. Reviewers will evaluate:

- How the outcomes and results of the proposed project will be

disseminated to audiences beyond those participating directly in the project.

These may include publications, conferences, community events, media, etc. associated with professional organizations such as AZA, ASTC, NAAEE and NMEA; and

- The likelihood that the project will increase awareness and use of NOAA resources among target audiences.

Review and Selection Process

Upon receipt of a completed application by NOAA, an initial administrative review is conducted to determine compliance with requirements and completeness of the application. Minimum requirements include all of the following:

- Applicant is a 501(c)(3) non-profit aquarium or organization associated with an aquarium;

- Application was received on time;
- All required elements of the application are present and follow format guidance;

- Requested budget is no less than \$300,000 and no more than \$3,000,000 for all years of the project;

- 50% non-Federal match is included in project budget; and

- Project duration is 1 to 5 years.

All applications that meet the eligibility and minimum requirements and that are ascertained to be complete will be evaluated and scored by a panel of independent reviewers. The reviews will be conducted by panel review.

Reviewers may be Federal or non-Federal experts, each having expertise in a separate area so that the reviewers as a whole cover the spectrum of applications received. The reviewers will score each application using the evaluation criteria and relative weights provided above. The individual review ratings shall be averaged for each application to establish rank order. No consensus advice will be given by the review panel. The Program Officer will neither vote nor score applications as part of the review process. The Program Officer will make his/her recommendations for funding based on rank order and the selection factors listed in the next paragraph to the Selecting Official, the Director of NOAA Education, for the selection of applications.

Selection Factors for Projects

The panel review ratings shall provide a rank order to the Selecting Official for final recommendation to the NOAA Grants Officer. The Selecting Official will select applications based on the evaluation criteria and rank order established by each panel unless the application is justified to be selected out

of rank order based upon one or more of the following factors:

1. Availability of funding;
2. Balance/distribution of funds:
 - a. Geographically
 - b. By type of institutions
 - c. By type of partners
 - d. By research areas
 - e. By project types
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies;
4. Program priorities and policy factors;
5. Applicant's prior award performance;
6. Partnerships and/or participation of targeted groups;
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer. Selected applicants may be asked to modify objectives, project plans, time lines, or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the applicant.

Intergovernmental Review

Applications submitted to this funding opportunity are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, http://www.nepa.noaa.gov/NAO216_6_TOC.pdf, and the Council on Environmental Quality

implementation regulations, http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 28, 2009.

Mitchell J. Ross,

Director, Acquisition and Grants Office.

[FR Doc. E9-10166 Filed 5-1-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XO02

Mid-Atlantic Fishery Management Council; Atlantic Mackerel, Butterfish, Atlantic Bluefish, Spiny Dogfish, Summer Flounder, Scup, Black Sea Bass, Tilefish, Surfclam, and Ocean Quahog Annual Catch Limits and Accountability Measures Omnibus Amendment; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; extension of comment period on intent to prepare an environmental impact statement (EIS).

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) extends the comment period on its intention to prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures to address the new Magnuson-Stevens Fishery Conservation and Management Act requirements for annual catch limits

(ACLs) and accountability measures (AMs) in an omnibus amendment to the fishery management plans (FMPs) for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs.

This notice announces an extension of the comment period for the public process of determining the scope of issues to be addressed, and for identifying the significant issues related to the implementation of ACLs and AMs for these fisheries. This notice is to alert the interested public of additional time to prepare and submit comments during the scoping process.

DATES: Written comments must be received on or before 5 p.m., EST, on May 31, 2009.

ADDRESSES: Written comments may be sent by any of the following methods:

- E-mail to the following address:

Omnibus.NOI@noaa.gov;

- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904-6790. Mark the outside of the envelope "Omnibus Amendment: National Standard 1 Requirements Scoping Comments"; or

- Fax to (302) 674-5399.

The scoping document may also be obtained from the Council office at the previously provided address, or by request to the Council by telephone (302) 674-2331, or via the Internet at <http://www.mafmc.org/mid-atlantic/comments/comments.htm>.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904-6790, (telephone 302-674-2331).

SUPPLEMENTARY INFORMATION: An initial notice of intent (NOI) to prepare an EIS and conduct public scoping meetings in support of ACL and AM development for an omnibus amendment to Council FMPs was published in the **Federal Register** on March 24, 2009 (74 FR 12314). The initial NOI contained detail on the topics to be addressed in the EIS and information on topics that may be considered for further development by the Council to address Magnuson-Stevens Fishery Conservation and Management Act ACL and AM requirements. Those details are not repeated here.

The initial NOI indicated that public comment was to be submitted to the Council by 5:00 p.m., EST, May 15, 2009. This subsequent announcement extends the previously published public

comment period to 5 p.m., EST, on May 31, 2009. The extension is provided to permit the public and other interested parties additional time to develop and submit comments on the NOI.

The initially announced scoping hearings contained in the March 24, 2009, announcement remain unchanged.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-10179 Filed 5-1-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 090416674-9675-01]

Implementation of New Competitive Prevention, Control, and Mitigation of Harmful Algal Blooms (HAB) Program and Regional Rotation of the Existing and New National Competitive HAB Programs

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; implementation of competitive research program.

SUMMARY: NOAA announces the implementation, under the authorities of the Harmful Algal Bloom and Hypoxia Research and Control Act (HABHRCA) of 1998, as reauthorized in 2004, of a new competitive research program on Prevention, Control, and Mitigation of Harmful Algal Blooms (PCM HAB). This third national competitive program is a companion to the two existing national harmful algal bloom (HAB) programs, Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) and Monitoring and Event Response of Harmful Algal Blooms (MERHAB), already implemented under the authorities of HABHRCA. PCM HAB will transition promising technologies and strategies for prevention, control, and mitigation, arising from these and other HAB research programs, to end-users. In addition, NOAA is announcing that funding opportunity announcements for ECOHAB, MERHAB, and HAB PCM will be rotated regionally on a three year basis. The three regional groupings are: Gulf of Mexico and Caribbean/Pacific Islands; West Coast, Alaska, and Great Lakes; and South Atlantic, Mid-Atlantic, Gulf of Maine.

Details concerning appropriate research subjects for each program, more information about the regional rotation, and additional procedural information are also provided in this announcement.

FOR FURTHER INFORMATION CONTACT:

Quay Dortch, ECOHAB Program Coordinator, 301/713-3338 ext 157, *Quay.Dortch@NOAA.gov* or Marc Suddleson, MERHAB Program Manager, 301/713-3338 ext. 162, *Marc.Suddleson@noaa.gov*, Center for Sponsored Coastal Ocean Research, National Centers for Coastal Ocean Science, NOS.

SUPPLEMENTARY INFORMATION:

I. Introduction

The 1998 Harmful Algal Bloom and Hypoxia Research Control Act (HABHRCA) and the Harmful Algal Bloom and Hypoxia Amendments Act of 2004 (2004 HABHRCA Reauthorization) authorized the establishment of three national programs on harmful algal blooms (HABs):

1. "Ecology and Oceanography of Harmful Algal Blooms" (ECOHAB) (HABHRCA Sec. 605 (2));
2. "Monitoring and analysis activities for HABs" (renamed Monitoring and Event Response for Harmful Algal Blooms or MERHAB) (HABHRCA Sec. 605 (4)); and
3. "A peer-reviewed research project on management measures that can be taken to prevent, reduce, control, and mitigate HABs." (HABHRCA Sec. 605 (3))

To implement the HABHRCA, NOAA established in 1998 the ECOHAB program as an interagency (NOAA, National Science Foundation (NSF), Environmental Protection Agency (EPA), National Aeronautics and Space Administration (NASA), Office of Naval Research (ONR), competitive research program, led by NOAA, and the MERHAB program as a NOAA competitive research program. ECOHAB provides coastal managers with the understanding, tools, and models to predict the development, extent, and toxicity of HABs and their impacts, leading to early warning and new prevention and mitigation strategies. MERHAB builds capacity and enhances partnerships between managers, researchers, and private industry to improve monitoring for HAB cells and toxins and responding to HAB events.

NOAA is now announcing the establishment of a Prevention Control and Mitigation of Harmful Algal Blooms (PCM HAB) Program pursuant to HABHRCA section 605(3). In the following sections, the new PCM HAB

program will be described (Section II), the existing ECOHAB and MERHAB programs will be described (Section III), and distinctions between all three programs will be clarified (Section IV). NOAA is also announcing that funding for the national competitive HAB programs, ECOHAB, MERHAB, and PCM HAB will be implemented on a rotating regional basis, as described in Section V.

II. Announcement of New National Competitive PCM HAB Program

Multiple interagency and HAB community reports and plans provide guidance for the new PCM HAB Program. The 2004 HABHRCA Reauthorization called for a National Scientific Research, Development, Demonstration, and Technology Transfer Plan on Reducing Impacts from Harmful Algal Blooms (*RDDTT Plan*) to “establish priorities and guidelines for a competitive, peer-reviewed, merit based interagency research, development, demonstration, and technology transfer program on methods for the prevention, control, and mitigation of HABs.” In response, a workshop was held to obtain input for this plan from HAB researchers, state and Federal resource and public health managers, and private industry. The resulting workshop report was published in September 2008, *HAB RDDTT National Workshop Report: A Plan for Reducing HABs and HAB Impacts (2008)*¹. The *RDDTT Plan*, based on the *Workshop Report*, was published in an interagency report, *Harmful Algal Bloom Management and Response: Assessment and Plan (2008)*². Both the *RDDTT Workshop Report* and the *RDDTT Plan* provide recommendations to advance research on prevention, control and mitigation of HABs and form the basis for the new PCM HAB program. Additional guidance about appropriate areas of research are provided by *Harmful Algal Research and Response: A Human Dimensions Strategy (2006)*³, *Prevention, Control, and Mitigation of Harmful Algal Blooms: A Research Plan (2001)*⁴, and *Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control, and Mitigation (1997)*⁵.

The PCM HAB program will transition promising technologies and strategies for preventing, controlling, or mitigating HABs and their impacts from development through demonstration and technology transfer for field application by end-users. The technologies will arise from HAB research conducted by the two existing national HAB programs, ECOHAB and MERHAB, or other research programs such as Sea Grant, the NOAA Oceans

and Human Health Initiative and the NSF/NIEHS Centers for Oceans and Human Health.

The goals of PCM HAB are as follows:

- (1) Develop and make widely available new socially and environmentally acceptable strategies and methods for preventing, controlling, and mitigating HABs and their impacts; and
- (2) Assess the social and economic costs of HAB events and the costs and benefits of prevention, control, and mitigation to guide future research and aid in the selection of the most appropriate management strategies and methods.

PCM research should address the following topics in order to meet the stated goals

- (1) Prevent HABs by:
 - (a) Using and modifying existing models to identify strategies to prevent HABs, for example by nutrient reductions or hydrodynamic modifications, and
 - (b) Minimizing or preventing introductions of invasive HAB species, their cysts, and organisms that facilitate the success of HAB species;
- (2) Control HABs and their impacts by:
 - (a) Eliminating or reducing the levels of HAB organisms through biological, chemical, or physical removal mechanisms, and
 - (b) Eliminating or reducing the levels of HAB toxins through biological, chemical or physical removal mechanisms;
- (3) Mitigate HABs and their impacts by developing or improving methods for
 - (a) HAB cell and toxin detection,
 - (b) Relocating or modifying aquaculture and wild-capture resources,
 - (c) Harvesting bans and closures,
 - (d) Fishing and processing practices,
 - (e) Education and outreach,
 - (f) Enhancing community capacity to respond to social and economic impacts, and
 - (g) Intervening to reduce wildlife mortality;
- (4) Enhance HAB response and ensure socially responsible development and effective implementation of PCM by
 - (a) Measuring social and economic costs of HABs and their impacts and the costs and benefits of HAB PCM,
 - (b) Improving communication strategies and approaches for facilitating changes in human behavior/attitudes, and
 - (c) Improving coordination of researchers, decision-makers, and stakeholders in implementing PCM research.

The PCM HAB program will be a competitive, peer-reviewed program

that supports projects in three stages. In the *Development* phase research will advance and evaluate unproven but promising PCM technologies and strategies. The *Demonstration* phase will test, validate and evaluate new technologies in the field across a broad temporal and spatial scale. Finally, the *Technology/Information Transfer* phase will facilitate the transition of technologies and strategies to end-user application. PCM HAB projects will be typically 2–3 years in duration. Proposals for projects can be submitted for any phase. A single proposal can cover one or more phases, depending on the magnitude of the project. All projects must specify the phase or phases of the research to be conducted for the project period and outline how additional phases will be conducted. End-users, including local, state, and Federal resource and public health managers, nonprofit organizations, and a variety of businesses, must be identified and will normally be involved in all three stages. Projects in the Technology Transfer phase will also need to have end-user support secured either for long-term operations or the application of the developed tool or technology.

III. Definition of Existing National Competitive ECOHAB and MERHAB Programs

A. ECOHAB

With the addition of the new PCM HAB program, ECOHAB is retaining the focus that was originally identified in *ECOHAB, the Ecology and Oceanography of Harmful Algal Blooms (1995)*⁶, as updated by *Harmful Algal Research and Response: A National Environmental Science Strategy (HARRNESS) 2005–2015 (2005)*⁷.

The goals of ECOHAB are to develop:

1. Quantitative understanding of HABs and, where applicable, their toxins in relation to the surrounding environment with the intent of developing new information and tools, predictive models and forecasts, and prevention strategies to aid managers in coastal environments; and
2. Understanding leading to models of trophic transfer of toxins, knowledge of biosynthesis and metabolism of toxins, and assessment of impacts of toxins on higher trophic levels. Research results will be used directly to guide management of coastal resources to reduce HAB development, impacts, and future threats and will feed into other HAB programs for development of tools to improve HAB management and response.

In order to meet the stated goals, research will be conducted in the following areas:

1. Developing methods for HAB cell and toxin detection that are necessary for the conduct of research on understanding the causes and dynamics of HABs and HAB impacts on higher trophic levels;

2. Understanding the factors controlling HAB growth and toxicity by focusing on harmful algal genetics, physiology, and toxin production;

3. Understanding community ecology and ecosystem dynamics, including top-down and bottom-up control of HABs;

4. Delineating the biosynthetic pathways and metabolism of toxins;

5. Determining the trophic transfer of toxins within food webs and the impacts of toxins on individual organisms and food webs;

ECOHAB is a NOAA-led interagency, peer-reviewed, competitive program that funds regional-scale studies and targeted studies. Regional ecosystem investigations of the causes and impacts of HABs leading to development of model-based operational ecological forecasting capabilities in areas with severe, recurrent blooms are a high priority. These can be either in new areas, areas that have been studied previously but where new or unanswered questions remain, or involve comparisons between ecosystems. Conducted by multi-disciplinary, multi-institutional teams, they are typically 3–5 years in duration. Targeted studies are conducted by individual or small groups of investigators for 2–3 years and address fundamental ecological and oceanographic questions related to HAB events.

B. MERHAB

MERHAB is guided by the recommendations in *Harmful Algal Research and Response: A National Environmental Science Strategy (HARRNESS) 2005–2015 (2005)*⁷ and its development was shaped by findings in *Prevention, Control, and Mitigation of Harmful Algal Blooms: A Research Plan (2001)*⁴, and *Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control, and Mitigation (1997)*⁵. The need for a comprehensive effort devoted to HAB monitoring is also provided by *HAB RDDTT National Workshop Report: A Plan for Reducing HABs and HAB Impacts (2008)*¹.

The principal goal of MERHAB is to build capacity of local, state, and tribal governments, and the private sector, for less costly and more precise and comprehensive monitoring of HAB cells and toxins, and for responding to HAB

events. Improved monitoring and event response capability will be achieved through

1. Development and management application of faster, less expensive and more reliable detection methods for HAB cells and toxins;

2. Development and management application of instrumentation for low-cost, long-term observations of conditions that influence HAB dynamics;

3. Application of improved monitoring strategies and forecast models to enhance early warning capability, foster improved response to HAB events, and demonstrate operational capabilities

MERHAB is a NOAA competitive, peer-reviewed program that funds regional-scale and targeted studies. Regional projects are multi-disciplinary, multi-institutional efforts of 3–5 years duration that promote sustainable, incentive-based partnerships with a broad spectrum of stakeholders, including multiple Federal agencies and state, academic, tribal, and local entities. Regional-scale projects must include management end-users as part of the partnership. Targeted projects address specific needs to improve HAB monitoring and response, typically last for 2–3 years, and are often smaller in scale and scope. All projects must have a clear and ready management application, and include identification of management end-users.

IV. Guidance for Submitting Proposals to ECOHAB, MERHAB, and PCM HAB

Several research topics may fit more than one HAB program. Further, there are some topics that are more appropriate for other NOAA programs or programs in other agencies. The following section (A.) lists examples of appropriate programs for different components of potentially overlapping topics. Examples of topics which are not applicable to any of these three programs are provided in Section B. However, when considering the development of a proposal, investigators are strongly advised to consult with the HAB program managers designated in the request for proposals to determine the appropriate program.

A. Examples of Appropriate Research Topics for Each Program

1. Developing methods of measuring and monitoring HAB cells and toxins. The purpose of the research and the stage of development will determine which program is appropriate.

- (a) ECOHAB will fund method development when it is necessary to conduct research.

- (b) MERHAB will fund method development when it is needed to improve or test an existing method for use in monitoring HAB cells or toxins or environmental conditions that foster HABs.

- (c) PCM HAB Phase 1 will fund novel method development where the concept is so new that it is unknown whether it will be suitable for research or monitoring.

- (d) PCM HAB will also fund efforts to make existing technologies more widely available.

2. Use of models for forecasting and prediction

- (a) HAB forecasting and prediction through the development of models, is covered by the ECOHAB program.

- (b) Development of partnerships to test and utilize models for forecasting as part of specific monitoring programs is under the purview of MERHAB.

- (c) Transfer of models for HAB forecasting and prediction to end users will be covered by PCM HAB.

- (d) Modification or use of models to develop prevention strategies will be funded by PCM HAB.

3. HAB-related human dimensions research will be conducted as part of the PCM HAB program, including socio-economic impacts of HABs. However, an ECOHAB or a MERHAB proposal may have a socio-economic component as part of a larger study.

B. Examples of Non-Applicable Research Topics

1. Prevention of HABs by implementation of nutrient reductions or hydrodynamic modifications is a possible strategy, but numerous other programs in other agencies address implementation issues. PCM HAB will not fund, for example, research to develop new methods of nutrient removal or develop land use practices that may reduce nutrient inputs. However, if actual nutrient reductions or hydrodynamic changes are implemented, PCM HAB may fund research to monitor and model the consequences of those activities if they will be transferable to other situations.

2. Disease surveillance, clinical characterization, and therapeutic guidance in humans are the purview of other programs within NOAA, such as NOAA OHHI, and other agencies, such as NSF/NIEHS COHH, CDC and FDA.

3. Drinking water monitoring and treatment is under the purview of EPA.

V. Establishment of a Regional Rotation for ECOHAB, MERHAB, and PCM HAB Programs

Funding competitions for the three national HAB programs, ECOHAB,

MERHAB, and PCM HAB, will be rotated on a regional basis in order to address programmatic needs and make more efficient use of resources. The need for a regional approach to addressing marine problems was emphasized in *An Ocean Blueprint for the 21st Century*⁸ and *America's Living Oceans: Charting a Course for Sea Change*⁹. In response, *Charting the Course for Ocean Science in the United States for the Next Decade: An Ocean*

*Research Priorities Plan and Implementation Strategy*¹⁰ and *Advancing NOAA's Priorities through Regional Collaboration*¹¹ recommend Federal agencies and NOAA take a regional approach. The 2004 Reauthorization of HABHRCA also acknowledged the need for a regional approach to HAB research and response by establishing a procedure for requesting Regional Assessments of HABs. In addition the regional rotation

will make more efficient use of the funding available for the large, regional ecosystem-scale studies frequently funded by these programs and facilitate the proposal review process.

Each year every region will be eligible to submit funding proposals to one of the three HAB programs. Regional eligibility will rotate annually on a three year cycle, as described in the following table.

Regional Group	Geographic Regions	Year 1	Year 2	Year 3
1	Gulf of Mexico, Caribbean/Pacific Islands	MERHAB	ECOHAB	PCM HAB
2	West Coast, Alaska, Great Lakes	ECOHAB	PCM HAB	MERHAB
3	South Atlantic, Mid-Atlantic, Gulf of Maine	PCM HAB	MERHAB	ECOHAB

The geographic region signifies where the HAB occurs, where the field work will be conducted, and/or where the benefit of the research will accrue. The location of the investigator(s) is not a determining factor. In cases where the choice of region is ambiguous, investigators are advised to consult with the appropriate Program Manager prior to submitting a letter of intent. Both regional-scale and targeted ECOHAB and MERHAB proposals will be accepted in the funding competitions held for each geographic region. Regional-scale proposals can extend between Geographic Regions in the same Regional Group (e.g. a regional-scale proposal can extend between the South Atlantic and Mid-Atlantic—both Group 3), but not between different Groups (e.g. the South Atlantic—Group 3, and Gulf of Mexico—Group 1) without prior approval of the Program Manager.

Most of the boundaries between regions listed in the table are self-evident. However, the boundary between the Gulf of Mexico and South Atlantic is set at Jupiter, FL in order to group together HABs associated with coral reefs that occur in both the Gulf of Mexico and the southeast coast of Florida. However, all proposals concerning primarily *Karenia* species will be submitted to competitions for the Gulf of Mexico, even if they occur on the Atlantic coast.

Some projects may not readily fit into a regional context. For example, a project may compare regions, involve many species, have a national scope, or be independent of a particular region. Investigators proposing projects that do not clearly fit any one region must have approval of the Program Manager.

VI. Procedural Information

A combined Request for Proposals for all three programs will be published

approximately annually, depending on availability of funds. It will specify the regional rotations for that year and provide guidance on areas of particular agency interest. Letters of intent will be due a month later and full proposals will be due in three months. Once initiated, the order of regional rotation will be maintained.

Investigators will be strongly encouraged to submit non-binding, brief letters of intent (LOI) for all three programs. The purpose of the LOI process is to provide information to potential applicants on the relevance of their proposed project to the HAB program for which it is being submitted, prior to submitting a full proposal. Full proposals will be encouraged only for LOIs deemed relevant. LOIs may be submitted by e-mail, mail, or fax and will be due one month after the request for proposals for the three HAB programs is published. They will be reviewed by Center for Sponsored Coastal Ocean Research (CSCOR) HAB Program Managers to determine whether the proposed project is responsive in terms of region and subject matter for each program and the eligibility of the recipients to receive funds. An LOI response will be sent back to the investigator encouraging or discouraging a full proposal. The investigator will not be precluded from submitting a full proposal regardless of the LOI response. The LOI and associated communications will not be shared with mail or Panel reviewers, and will not be a factor in the decisional process.

Separate proposal review panels will be held for each program. The panel expertise will reflect the focus of each specific program and the range of proposals that have been submitted. Proposals for the three phases of the PCM HAB program will be considered by the same panel.

VII. References

1. Dortch, Q., Anderson, D., Ayres, D., and Glibert, P., editors, 2008. *Harmful Algal Bloom Research, Development, Demonstration and Technology Transfer: A National Workshop Report*. Woods Hole Oceanographic Institute, Woods Hole, MA. (<http://www.whoi.edu/fileservlet.do?id=43464&pt=10&p=19132>)
2. Jewett, E.B., Lopez, C.B., Dortch, Q., Etheridge, S.M., Backer, L.C., 2008. *Harmful Algal Bloom Management and Response: Assessment and Plan*. Interagency Working Group on Harmful Algal Blooms, Hypoxia and Human Health of the Joint Subcommittee on Ocean Science and Technology. Washington, DC, 76 pp. (http://ocean.ceq.gov/about/docs/jsost_hab0908.pdf)
3. Bauer, M.(ed.). 2006. *Harmful Algal Research and Response: A Human Dimensions Strategy*. National Office for Marine Biotoxins and Harmful Algal Blooms. Woods Hole, MA: Woods Hole Oceanographic Institution, 72 pp. (<http://coastalscience.noaa.gov/stressors/extremeevents/hab/HDstrategy.pdf>)
4. *Prevention, Control, and Mitigation of Harmful Algal Blooms: A Research Plan, 2001*. NOAA National Sea Grant College Program, 28pp. (http://www.whoi.edu/science/B/redtide/pertinentinfo/PCM_HAB_Research_Plan)
5. Boesch, D.F., Anderson, D.M., Horner, R.A., Shumway, S.E., Tester, P.A. and Whitledge, T.E. 1997. *Harmful Algal Blooms in Coastal Waters: Options for Prevention, Control, and Mitigation*. NOAA/COP/Decision Analysis Series No.10. Silver Spring, MD: NOAA Coastal Ocean Office, 61 pp. (<http://www.cop.noaa.gov/pubs/das/das10.pdf>)
6. Anderson, D.M. 1995. *ECOHAB, the Ecology and Oceanography of Harmful*

Algal Blooms. Woods Hole, MA: Woods Hole Oceanographic Institution. (<http://www.whoi.edu/redtide/nationplan/ECOHAB/ECOHABhtml.html>)

7. *Harmful Algal Research and Response: A National Environmental Science Strategy* (HARRNESS) 2005–2015. 2005. Ecological Society of America, Washington, D.C. (<http://www.cop.noaa.gov/stressors/extremeevents/hab/current/harness.html>)

8. U.S. Commission on Ocean Policy, 2004. *An Ocean Blueprint for the 21st Century*. Final Report. Washington, DC, 2004 (http://www.oceancommission.gov/documents/full_color_rpt/welcome.html)

9. Pew Oceans Commission, 2003. *America's Living Oceans: Charting a Course for Sea Change*. Summary Report. Pew Oceans Commission, Arlington, Virginia. (http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Protecting_ocean_life/POC_Summary.pdf)

10. NSTC Joint Subcommittee on Ocean Science and Technology, 2007. *Charting the Course for Ocean Science in the United States for the Next Decade: An Ocean Research Priorities Plan and Implementation Strategy* (http://ocean.ceq.gov/about/sup_jsost_prioritiesplan.html)

11. NOAA Program Planning & Integration, 2007. *Advancing NOAA's Priorities through Regional Collaboration* (http://www.ppi.noaa.gov/Regional_Collaboration/Regional_Collaboration_Overview_041307.pdf)

Dated: April 23, 2009.

Christopher Cartwright,

Chief Financial Officer, Ocean Service and Coastal Zone Management.

[FR Doc. E9–10187 Filed 5–1–09; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP02

Marine Mammals; File No. 633–1763

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; withdrawal of application.

SUMMARY: Notice is hereby given that the Center for Coastal Studies (CCS), P.O. Box 1036, Provincetown, MA 02657, has withdrawn its application for

an amendment to scientific research Permit No. 633–1763.

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9300; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT:

Kristy Beard or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

On October 16, 2008 a notice was published in the **Federal Register** (73 FR 61398) that an amendment application had been filed by CCS. The amendment to Permit No. 633–1763 was requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Permit No. 633–1763, issued on April 21, 2005 (70 FR 22299), authorizes the permit holder to harass North Atlantic right whales (*Eubalaena glacialis*) during close approaches for aerial and vessel surveys with associated photo-identification and behavioral observations in the Gulf of Maine, Cape Cod Bay, Great South Channel, and Georgia Bight; and the collection and export of sloughed right whale skin. The applicant has withdrawn their application.

Dated: April 28, 2009.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–10168 Filed 5–1–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Government Property (OMB Control Number 0704–0246)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through July 31, 2009. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by July 6, 2009.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0246, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include OMB Control Number 0704–0246 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703-602-0302. The information collection requirements addressed in this notice are available on the World Wide Web at: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>. Paper copies are available from Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 245, Government Property; DFARS 211.274, Item Identification and Valuation Requirements; DD Form 1149, Requisition and Invoice/Shipping Document; DD Form 1342, Property Record; DD Form 1637, Notice of Acceptance of Inventory Schedules; DD Form 1639, Scrap Warranty; and DD Form 1640, Request for Plant Clearance; OMB Control Number 0704-0246.

Needs and Uses: DoD needs this information to keep an account of Government property in the possession of contractors. Property administrators, contracting officers, and contractors use this information to maintain property records and material inspection, shipping, and receiving reports.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 49,580.

Number of Respondents: 14,282.

Responses per Respondent: 2.9.

Annual Responses: 41,917.

Average Burden per Response: 1.2 hours.

Frequency: On occasion.

Summary of Information Collection

This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of contractor inventory.

a. DFARS 245.405(1) requires contractors to obtain contracting officer approval before using Government production and research property on work for foreign governments or international organizations.

b. DFARS 245.603-70(c) requires contractors that perform plant clearance duties to ensure that inventory schedules are satisfactory for storage or removal purposes. Contractors may use DD Form 1637 for this function.

c. DFARS 245.606-70 requires contractors to use DD Form 1342 to

prepare a list of excess industrial plant equipment for submission to the Government property administrator.

d. DFARS 245.607-1(a)(i) permits contractors to request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap.

e. DFARS 245.7101-2 permits contractors to use DD Form 1149 for transfer and donation of excess contractor inventory.

f. DFARS 245.7101-4 requires contractors to use DD Form 1640 to request plant clearance assistance or to transfer plant clearance.

g. DFARS 245.7303 and 245.7304 require contractors to use invitations for bid for the sale of surplus contractor inventory.

h. DFARS 245.7308(a) requires contractors to send certain information to the Department of Justice and the General Services Administration when the contractor sells or otherwise disposes of inventory with an estimated fair market value of \$3 million or more, or disposes of any patents, processes, techniques or inventions, regardless of cost.

i. DFARS 245.7310-7 requires a purchaser of scrap to represent and warrant that the property will be used only as scrap. The purchaser also must sign DD Form 1639.

j. DFARS 211.274 requires contractors to electronically submit, to the Item Unique Identification (IUID) Registry, the IUID data applicable to Government property in the contractor's possession.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E9-10192 Filed 5-1-09; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers;

Notice of Availability for the Draft Environmental Impact Statement/ Environmental Impact Report for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division), in coordination with the California Department of Fish

and Game, has completed a Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan. The project proponent and landowner, The Newhall Land and Farming Company, requires a long-term Section 404 permit from the Corps of Engineers for permanent impacts to approximately 82.3 acres of waters of the United States, including 8.69 acres of wetlands, for the construction of various facilities in waters of the United States associated with the development of a new community composed of a broad range of residential, mixed-use and nonresidential land uses in the 12,000-acre project area located in Santa Clarita, Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT:

Questions or comments concerning the Draft EIS/EIR should be directed to Dr. Aaron O. Allen, Chief, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, CA 90053-2325, (805) 585-2148.

SUPPLEMENTARY INFORMATION: This Draft EIS/EIR has been filed with the Environmental Protection Agency to be published in the **Federal Register**. The review period for the Draft EIS/EIR will begin from the date of publishing the Notice of Availability in the **Federal Register**, which is on May 1, 2009. Please forward your comments for the Draft EIS/EIR to the contact listed above by June 25, 2009.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. E9-10160 Filed 5-1-09; 8:45 am]

BILLING CODE 3710-KF-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and

Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 29, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan Program General Forbearance Request.

Frequency: On Occasion.

Affected Public: Individuals or household; Private Sector.

Reporting and Recordkeeping Hour Burden:

Responses: 1,186,120.

Burden Hours: 237,224.

Abstract: The William D. Ford Federal Direct Loan (Direct Loan) Program General Forbearance Request serves as the means by which a Direct Loan borrower who is temporarily unable to

make loan payments due to a financial hardship requests a forbearance on his or her loans. A forbearance is a temporary cessation of payments or a temporary reduction in the amount of a borrower's monthly loan payment.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4025. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-10176 Filed 5-1-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 3, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395-5806 or send e-mail to oir_submission@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 29, 2009.

Angela C. Arrington,

Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New Collection.

Title: Evaluation of Secondary Math Teachers from Two Highly Selective Routes to Alternative Certification.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 26,929.

Burden Hours: 11,582.

Abstract: The Evaluation of Secondary Math Teachers from Two Highly Selective Routes to Alternative Certification will examine the relative effectiveness of secondary math achievement who obtain certification through the two largest highly selective routes to alternative. This second package for the majority of the data collection, including the teacher survey and collection of teacher contact information, a teacher math content knowledge assessment, a form for teachers to release their test scores to the study team, parent/guardian consent forms, collection of school records data, a student math assessment and students' assent for taking the assessment, and a protocol for semi-structured interviews of alternative certification program administrators.

Requests for copies of the information collection submission for OMB review may be accessed from <http://>

edicsweb.ed.gov, by selecting the "Browse Pending Collections" link and by clicking on link number 3950. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-10178 Filed 5-1-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 3, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395-5806 or send e-mail to oir_submission@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 29, 2009.

Angela C. Arrington,

Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Evaluation of the Personnel Development to Improve Services and Results for Children with Disabilities Program.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 242.

Burden Hours: 282.

Abstract: The U.S. Department of Education has commissioned Westat to independently evaluate the PDP program. This evaluation is divided into two studies, one focusing on the National Centers, the other on the Institutes of Higher Education (IHEs). The Study of the National Centers will examine the materials and services that have been developed and provided by the Centers as well as characteristics of the consumers. In addition, the panel of experts will rate the quality of a sample of products and services from each Center along three dimensions: adherence to scientifically based standards, relevance to the field, and usefulness. The IHE Study will collect data through a survey of proposed Project Directors of funded and non-funded projects, as well as a collection of materials documenting improvement of funded courses of study. It will address (a) status; (b) focus; (c) entry and completion requirements; (d) grant support for students; (e) changes to the course of study since the time of the application; (f) enrollment and completion information; (g) standardized exit exam scores; (h)

allocation of PDP grant funds; and (i) information about formal data collection from program.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3963. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address ICDocketMgr@ed.gov or faxed to (202) 401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-10180 Filed 5-1-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Docket No. EERE-2007-BT-CRT-0009]

Proposed Agency Information Collection: Energy Conservation Program: Compliance and Certification Information Collection for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, proposes to initiate through the Office of Management and Budget (OMB) the mandatory Compliance Certification information collection request for certain 1 through 200 horsepower electric motors covered under the Energy Policy and Conservation Act (EPCA) as amended, Public Law 94-163, codified at, 42 U.S.C. 6291 *et seq.* Under EPCA, a manufacturer or private labeler must certify its compliance with energy efficiency standards for certain commercial and industrial electric motors. 42 U.S.C. 6316(c) and 10 CFR 431.36.

DATES: Comments regarding this collection must be received on or before

July 6, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please call Mr. James Raba at (202) 586-8654.

ADDRESSES: Comments must identify the information collection for electric motors and provide the docket number EERE-2007-BT-CRT-0009. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* appliance.information@ee.doe.gov. Include the docket number in the subject line of your message.

- *Postal Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed paper original.

- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, Sixth Floor, Washington, DC 20024-2123. Please submit one signed original paper copy.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information or copies of the information collection instrument and instructions to Mr. James Raba, U.S. Department of Energy, Building Technologies Program (EE-2J), 950 L'Enfant Plaza, Washington, DC 20024-2123, (202) 586-8654, jim.raba@ee.doe.gov. In the Office of the General Counsel, contact Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20085. Telephone: (202) 586-9507. E-mail: Francine.Pinto@hq.doe.gov or Michael.Kido@hq.doe.gov.

Authority and Background: EPCA establishes energy efficiency standards and test procedures for certain commercial and industrial equipment, including electric motors, 42 U.S.C. 6291 *et seq.*, and states in relevant part that, "the Secretary [of Energy] shall require manufacturers to certify" that each electric motor meets the applicable efficiency standards. (42 U.S.C. 6316(c)) To achieve this end, EPCA authorizes the Secretary to issue the necessary rules requiring each manufacturer or private labeler of covered electric motors to submit information and reports to ensure compliance. (42 U.S.C. 6316(a)) This directive is carried out under 10 CFR 431.36, Compliance Certification, which requires a

manufacturer or private labeler to submit a compliance statement, as well as a certification report that provides energy efficiency information for each basic model of electric motor that it distributes in commerce in the United States.

In view of the above, the information to be collected is the same as the Compliance Certification information, at appendix C to subpart B of 10 CFR part 431, which provides a format for a manufacturer or private labeler to report the energy efficiency of its basic models of electric motors according to rated horsepower or kilowatts, number of poles (speed in revolutions per minute), and open or enclosed construction. Further, it provides a means for a manufacturer or private labeler to certify compliance with the applicable energy efficiency standards prescribed under section 342(b)(1) of EPCA, codified at 42 U.S.C. 6313(b)(1), through an independent testing or certification program nationally recognized in the United States (section 345(c) of the EPCA, codified at 42 U.S.C. 6316(c)). The information contained in the Compliance Certification is a basis for the energy efficiency information marked on the permanent nameplate of an electric motor and thereby enables purchasers to compare the energy efficiencies of similar motors. 10 CFR 431.31 Compliance Certification information facilitates voluntary compliance with and enforcement of the energy efficiency standards established for electric motors under EPCA 342(b)(1), 42 U.S.C. 6313(b)(1).

SUPPLEMENTARY INFORMATION: (1) *OMB No.:* 1910-NEW. (2) *Collection Title:* Title 10 Code of Federal Regulations Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Subpart B—Electric Motors: 10 CFR 431.36, Compliance Certification, and Appendix C to Subpart B of Part 431—Compliance Certification, "Certification of Compliance with Energy Efficiency Standards for Electric Motors." (3) *Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired. (4) *Purpose:* The purpose of the collection is two-fold: (1) To require the manufacturer or private labeler of certain commercial or industrial electric motors subject to energy efficiency standards prescribed under section 342(b) of EPCA to establish, maintain, and retain records of its test data and subsequent verification of any alternative efficiency determination method used under 10 CFR part 431, *et seq.*; and (2) to preclude distribution in

commerce of any basic model of commercial or industrial electric motor that is subject to an energy efficiency standard set forth under subpart B of part 431, unless the manufacturer or private labeler of that motor has submitted a Compliance Certification to DOE according to the provisions under 10 CFR 431.36, certifying that the basic model meets the requirements of the applicable standard. This information ensures compliance with the energy efficiency standards for certain commercial and industrial electric motors. (5) *Estimated Number of Respondents:* There are approximately 100 manufacturers and private labelers that distribute in commerce in the United States electric motors covered under 10 CFR part 431, *et seq.* (6) *Estimated Total Burden Hours:* There are approximately 300 total recordkeeping and reporting hours (3 hours per manufacturer or private labeler) at a total annualized cost of approximately \$20,000.00 (\$200.00 per manufacturer or private labeler). (7) *Number of Collections:* The request contains one information and recordkeeping requirement for each manufacturer or private labeler.

Comments are invited on (a) whether the information collections are necessary for the proper performance of the functions of DOE, including whether the information has practical utility; (b) the accuracy of DOE's estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology, such as permitting the electronic submission of responses.

Comments submitted in response to this notice will be summarized and included in the request for OMB review and approval of these information collections. The comments will also become a matter of public record.

Docket: For direct access to the docket to read background documents or comments received, go to the U.S. Department of Energy, 950 L'Enfant Plaza (Resource Room of the Building Technologies Program, Sixth Floor), Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586-2945 for additional information regarding the Resource Room.

Statutory Authority: 10 CFR part 431.

Issued in Washington, DC on April 21, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9-10157 Filed 5-1-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459-265]

AmerenUE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 27, 2009.

- a. *Type of Application:* Non-project use of project lands and waters.
- b. *Project Number:* 459-265.
- c. *Date Filed:* April 3, 2009.
- d. *Applicant:* AmerenUE.
- e. *Name of Project:* Osage Hydroelectric Project.
- f. *Location:* The proposed non-project use is located at mile marker 7.5 of the main channel of Lake of the Ozarks, in Camden County, Missouri.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren/UE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365-9214.
- i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey at (202) 502-6864.
- j. *Deadline for filing comments and or motions:* May 27, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Union Electric Company, dba AmerenUE, filed an application seeking Commission authorization to permit Glacier Park

Investments, LLC to modify existing docks and construct new docks near mile marker 7.5 of the main channel of Lake of the Ozarks in Camden County, Missouri. The application is for reconfiguration of 2 existing permitted docks, replacement of 1 un-permitted dock, and construction of 4 new docks for a total of 83 boat slips. Existing land use at the proposed activity site consists of commercial development, including Glacier Park Investments, LLC's Shady Gators restaurant and bar. No dredging is proposed. This application was filed after consultation with the appropriate agencies.

1. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P-459) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3372 or e-mail FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-10121 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13373-000]

Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 23, 2009.

On February 12, 2009, Hydrodynamics, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cooney Reservoir Hydroelectric Project, which would be located at the existing Cooney Reservoir dam on Red Lodge Creek near the town of Boyd in Carbon County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

- (1) An existing 2,369-foot-long, 103-foot-high earthen dam;
- (2) an existing reservoir with a surface area of 1,078 acres and a storage capacity of 28,230 acre-feet at the normal water surface elevation of 4,173 feet mean sea level;
- (3) an existing 430-foot-long concrete dam outlet works tunnel, which would be lined with steel;
- (4) a new 54-inch-diameter, 430-foot-long penstock in the tunnel;
- (5) a new 20-foot-long penstock extending from the tunnel to the

powerhouse; (6) a new powerhouse containing two generating units with a combined installed capacity of 0.8 megawatts; (7) a new tailrace discharging flows into Red Lodge Creek at the base of the dam; (8) a new substation; (9) a proposed 15-kilovolt, 8-mile-long transmission line; and (10) appurtenant facilities. The proposed project would have an average annual generation of 4.2 gigawatt-hours.

Applicant Contact: Ben Singer, Project Manager, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771; phone: (406) 587-5086.

FERC Contact: Dianne Rodman, (202) 502-6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13373) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10100 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13372-000]

Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 23, 2009.

On February 11, 2009, Hydrodynamics, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Tongue River Reservoir Hydroelectric Project, which would be located at the existing Tongue River Reservoir dam on the Tongue River near the town of Decker in Bighorn County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) An existing 1,824-foot-long, 91-foot-high earthen dam; (2) an existing reservoir with a surface area of 3,700 acres and a storage capacity of 79,071 acre-feet at the normal water surface elevation of 3,138 feet mean sea level; (3) an existing concrete outlet works tunnel, which would be lined with steel; (4) a new 84-inch, 520-foot-long steel penstock in the tunnel; (5) a new 40-foot-long penstock extending from the tunnel to the powerhouse; (6) a new powerhouse containing two generating units with a combined installed capacity of 2.0 megawatts; (7) a new tailrace discharging flows into the Tongue River at the base of the dam; (8) a new substation; (9) a new 125-kilovolt, 8.5-mile-long transmission line; and (10) appurtenant facilities. The proposed project would have an average annual generation of 11.0 gigawatt-hours.

Applicant Contact: Ben Singer, Project Manager, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771; phone: (406) 587-5086.

FERC Contact: Dianne Rodman, (202) 502-6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene,

and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13373) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10101 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1020-000]

Panoche Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 24, 2009.

This is a supplemental notice in the above-referenced proceeding of Panoche Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and

assumptions of liability, is May 12, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-10105 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 24, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09-71-000.

Applicants: Wisconsin Power and Light Company.

Description: Application of Wisconsin Power and Light Company; Preliminary Survey and Investigation Costs for Proposed Nelson Dewey Generating Facility Unit 3.

Filed Date: 04/24/2009.

Accession Number: 20090424-5068.

Comment Date: 5 p.m. Eastern Time on Friday, May 15, 2009.

Docket Numbers: EC09-72-000.

Applicants: MACH Gen, LLC, Merrill Lynch GENCO II, LLC.

Description: Application for Order Authorizing Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.

Filed Date: 04/24/2009.

Accession Number: 20090424-5071.

Comment Date: 5 p.m. Eastern Time on Friday, May 15, 2009.

Docket Numbers: EC09-73-000.

Applicants: Granite Ridge Energy, LLC, Merrill Lynch Credit Products, LLC.

Description: Application for Order Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.

Filed Date: 04/24/2009.

Accession Number: 20090424-5078.

Comment Date: 5 p.m. Eastern Time on Friday, May 15, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98-4512-006.

Applicants: Consolidated Water Power Company.

Description: Letter of Concurrence submitted by Consolidated Water Power Company.

Filed Date: 04/23/2009.

Accession Number: 20090423-5065.

Comment Date: 5 p.m. Eastern Time on Thursday, May 14, 2009.

Docket Numbers: ER09-1028-000.

Applicants: Covanta Hempstead Company.

Description: Covanta Hempstead Co submits a request for acceptance of their initial Market-Based Rate Tariff, Waivers and Blanket Authority.

Filed Date: 04/23/2009.

Accession Number: 20090423-0261.

Comment Date: 5 p.m. Eastern Time on Thursday, May 14, 2009.

Docket Numbers: ER09-1029-000.

Applicants: ISO New England Inc.

Description: Action Energy LLC *et al.* submits motion for limited waiver and request for expedited treatment of indicated DR market participant.

Filed Date: 04/23/2009.

Accession Number: 20090423-0231.

Comment Date: 5 p.m. Eastern Time on Thursday, May 14, 2009.

Docket Numbers: ER09-1031-000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits FERC Electric Rate Schedule No. 319, a Supplemental Generation Agreement.

Filed Date: 04/23/2009.

Accession Number: 20090423-0260.

Comment Date: 5 p.m. Eastern Time on Thursday, May 14, 2009.

Docket Numbers: ER09-1032-000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits FERC Electric Rate Schedule No. 320, a Supplemental Generation Agreement.

Filed Date: 04/23/2009.

Accession Number: 20090423-0259.

Comment Date: 5 p.m. Eastern Time on Thursday, May 14, 2009.

Docket Numbers: ER09-1033-000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits FERC Electric Rate Schedule No. 318, a Supplemental Generation Agreement.

Filed Date: 04/23/2009.

Accession Number: 20090423-0258.

Comment Date: 5 p.m. Eastern Time on Thursday, May 14, 2009.

Docket Numbers: ER09-1034-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement.

Filed Date: 04/23/2009.

Accession Number: 20090423-0257.

Comment Date: 5 p.m. Eastern Time on Thursday, May 14, 2009.

Docket Numbers: ER09-1037-000.

Applicants: Wisconsin Power and Light Company.

Description: Application of Wisconsin Power and Light Company; Preliminary Survey and Investigation Costs for Proposed Nelson Dewey Generating Facility Unit 3.

Filed Date: 04/24/2009.

Accession Number: 20090424-5068.

Comment Date: 5 p.m. Eastern Time on Friday, May 15, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09-27-000.

Applicants: El Paso Electric Company.

Description: Application of El Paso Electric Company under Section 204 of the Federal Power Act to Extend the Term of Authorization for a Revolving Credit Facility.

Filed Date: 04/21/2009.

Accession Number: 20090421-5207.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 12, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9-10159 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09-48-000]

The Connecticut Department of Public Utility Control and the Connecticut Office of Consumer Counsel, Complainant v. ISO New England Inc. and Unidentified Installed Capacity Resources Committed To Import Over the Northern New York AC Interface, Respondent; Notice of Complaint Requesting Fast Track

April 24, 2009.

Take notice that on April 23, 2009 the Connecticut Department of Public Utility Control and the Connecticut Office of Consumer Counsel (collectively, Connecticut Representatives) filed a formal complaint against ISO New England Inc. (ISO-NE) and Unidentified Installed Capacity Resources Committed to Import over the Northern New York AC Interface (NNY Capacity Resources) pursuant to sections 206, 222, and 309 of the Federal Power Act, 16 U.S.C. 824e, 824v, and 825h (2006), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2009), seeking a Commission investigation and hearing into installed capacity resources who received capacity payments but never provided any capacity services when called upon.

Connecticut Representatives certify that copies of the complaint were served on the contacts for ISO-NE and New England Power Pool, Inc. (NEPOOL), as a representative of the Unidentified NNY Capacity Resources, as listed on the Commission's list of Corporate Officials. Connecticut Representatives requests that NEPOOL post this complaint.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

"eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 11, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10104 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13423-000]

Willwood Irrigation District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 24, 2009.

On April 6, 2009, Willwood Irrigation District filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Willwood Dam Hydroelectric Project. The project would be located on Federal lands in Park County in Wyoming, approximately nine miles southwest of Powell, Wyoming and would utilize the U.S. Bureau of Reclamation's Willwood Diversion Dam.

The proposed project using the U.S. Bureau of Reclamation's Willwood Diversion Dam would consist of: (1) A short proposed penstock from the existing seven-foot-diameter opening in the dam to the proposed powerhouse; (2) a proposed powerhouse at the base of the existing dam containing one Kaplan turbine, a generator, and control systems with a total installed capacity of 2,000 kilowatts, (3) a proposed 34.5-kV, two-mile-long transmission line. The project would have an annual generation of approximately 7.8

gigawatt-hours that would be sold to a local utility.

Applicant Contact: Mr. Tom Walker, Willwood Irrigation District, 1306 Road 9, Powell, Wyoming 82435; phone: (307) 754-3831. *FERC Contact:* Gina Krump, (202) 502-6704.

Deadline for filing comments, motions to intervene, competing applications, or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13423-000) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10106 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-747-000]

Robbins Energy LLC; Notice of Filing

April 23, 2009.

Take notice that on April 20, 2009, Robbins Energy LLC filed a supplement to revise its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 11, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10102 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2467-019]

Pacific Gas and Electric Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

April 24, 2009.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 2467-019.

c. *Dated Filed:* February 23, 2009.

d. *Submitted by:* Pacific Gas and Electric Company.

e. *Name of Project:* Merced Falls Hydroelectric.

f. *Location:* Merced River on the border of Merced and Mariposa counties, California, immediately downstream of the Merced River Hydroelectric Project (No. 2179), operated by the Merced Irrigation District.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Pacific Gas and Electric Company c/o Randal S. Livingston, Vice President—Power Generation, P.O. Box 770000, MC N11E-1103, San Francisco, CA 94177-0001.

i. *FERC Contact:* Matt Buhyoff at (202) 502-6824 or e-mail at matt.buhyoff@ferc.gov.

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Pacific Gas and Electric Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. Pacific Gas and Electric filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll

free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at <http://ferc.gov/esubscribenow.htm> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph (h). In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Merced Falls Hydroelectric Project) and number (P-2467-019), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by June 23, 2009.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov/docs-filing/ferconline.asp>) under the "e-filing" link. For a simpler method of submitting text only comments, click on "Quick Comment."

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10107 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ09-3-000]

Big Rivers Electric Corporation; Notice of Filing

April 27, 2009.

Take notice that on April 22, 2009, Big Rivers Electric Corporation filed a Petition for Declaratory Order revising its "safe harbor" Open Access Transmission Tariff in compliance with the Commission's Order Nos. 890-A, 890-B and 890-C, pursuant to section 35.28(e) of the Federal Energy Commission's regulations, 18 CFR 35.8(e) (2208), and Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 22, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10122 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08-49-001]

BJ Energy LLC, Franklin Power LLC, GLE Trading LLC, Ocean Power LLC, Pillar Fund LLC v. PJM Interconnection, LLC; Notice Requiring Protective Order

April 24, 2009.

Take notice on April 15, 2009, PJM Interconnection, LLC (PJM) filed a motion requesting the Commission authorize the public release of currently non-public documents of BJ Energy, *et al.* that PJM filed as part of an answer and request for rehearing in this docket.¹ PJM represented that these documents are covered by a protective order issued by the United States District Court for the Eastern District of Pennsylvania.² PJM attached a copy of the District Court's March 26, 2009 order which provided that "[t]he court's Protective Order does not prohibit FERC from issuing an order declassifying documents submitted to this court under seal."³ On April 23, 2009, the BJ Energy, *et al.* filed an answer, requesting that the Commission deny PJM's motion and maintain the confidentiality of this information.

Pursuant to Rule 213(c)(5) of the Commission's regulations, 18 CFR 385.213 (c)(5), PJM is required to provide such documents to those parties whose interventions were accepted in the April 2, 2009 order⁴ that request the documents and sign a protective order no less stringent than the one already approved by the District Court.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public

¹ The request related to: (1) PJM's answer to Tower Companies supplemental answer and amendment of PJM's answer to the complaint filed in this proceeding on March 4, 2009; and (2) PJM's April 15, 2009 filing for clarification and rehearing in this proceeding.

² *BJ Energy LLC, et al. v. PJM Interconnection, LLC* Protective Order, C.A. No. 08-cv-03649-NS (Jan. 7, 2009).

³ *BJ Energy LLC, et al. v. PJM Interconnection, LLC* Protective Order, C.A. No. 2:08-cv-03649-NS (March 26, 2009).

⁴ *BJ Energy LLC v. PJM Interconnection, LLC*, 127 FERC ¶ 61,006 (2009).

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10108 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 460-033; 460-040]

City of Tacoma, WA; Notice of Technical Conference, Public Meeting, and Site Visit for the Cushman Hydroelectric Project Settlement Agreement and Amendment of License To Construct Third Powerhouse

April 24, 2009.

On January 21, 2009, the City of Tacoma, Washington (Tacoma Power), on behalf of itself, the Skokomish Indian Tribe, and six state and federal agencies, filed a comprehensive settlement agreement (Settlement) and Joint Explanatory Statement for the Cushman Project. On January 26, 2009, Tacoma Power filed an Application for Amendment of License to construct a third powerhouse at the base of Cushman Dam No. 2.

Technical Conference and Public Meeting

Commission staff will hold a technical conference to discuss the proposed license articles submitted by Tacoma Power as part of its Settlement. Commission staff will also hold a public meeting to solicit comments on the Settlement and License Amendment.

The technical conference will be held on Thursday, May 21, 2009, beginning at 8:30 a.m. (PST). Participation at the technical conference will be limited to Commission staff and the Settlement Parties, though the public is free to attend. The public meeting will begin at 4 p.m. (PST). Both the technical conference and public meeting will be held at the Tacoma Public Utilities building, located at 3628 S. 35th Street, Tacoma, WA 98409-3192. The technical conference and meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public

record for the project. The conference, meeting, and site visit described below are posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Site Visit

On Wednesday, May 20, 2009, Commission staff, along with representatives of Tacoma Power, will conduct a site visit of the Cushman Project. The site visit will begin at 8:30 a.m. (PST). All interested individuals, organizations, and agencies are invited to attend. All participants should meet at Cushman Powerhouse No. 2, located on Hwy 101, 2.4 miles south of Hoodspoint, WA. In addition, all participants are responsible for their own transportation to the site and throughout the day. Anyone planning to attend, or otherwise with questions about, the site visit should contact Mr. Paul Hickey of Tacoma Power at (253) 502-8692.

For further information, contact Allan Creamer at (202) 502-8365, or by e-mail at allan.creamer@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-10103 Filed 5-1-09; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

CANCELLATIONS: Executive Session Scheduled for Tuesday, April 28, 2009.

Executive Session Scheduled for Wednesday, April 29, 2009.

Open Meeting Scheduled for Thursday, April 30, 2009.

DATE AND TIME: Thursday, April 30, 2009, at 10 a.m.

Tuesday, May 5, 2009, at 10 a.m.

Wednesday, May 6, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: These meetings will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION:

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9-10092 Filed 5-1-09; 8:45 am]

BILLING CODE 6715-01-M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0248]

General Services Administration Acquisition Regulation; Submission for OMB Review; Solicitation Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Solicitation provisions and contract clauses, placement of orders clauses, and ordering information clause. A request for public comments was published in the **Federal Register** at 74 FR 8258, February 24, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before: June 3, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: General Services Administration (GSA) Desk Officer,

OMB, Room 10236, NEOB, Washington, DC 20503, and send a copy to the Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090-0248, Solicitation Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Division, GSA, telephone (202) 501-1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of the Federal Acquisition Service's (FAS's) Stock, Special Order, and Schedules Programs. These mission responsibilities generate requirements that are realized through the solicitation and award of various types of FAS contracts. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives. As such, GSAR 516.506, Solicitation provision and clauses, specifically directs contracting officers to insert 552.216-72, Placement of Orders, when the contract authorizes FAS and other activities to issue delivery or task orders and 552.216-73, Ordering Information, directs the Offeror to elect to receive orders placed by FAS by either facsimile transmission or computer-to-computer Electronic Data Interchange (EDI).

B. Annual Reporting Burden

Respondents: 7,143.

Responses per Respondent: 1.

Annual Responses: 7,143.

Hours per Response: .25.

Total Burden Hours: 1,786.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 3090-0248, Solicitation Provisions and Contract Clauses, Placement of Orders Clause, and Ordering Information Clause in all correspondence.

Dated: April 28, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9-10155 Filed 5-1-09; 8:45 am]

BILLING CODE 6820-61-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-0294]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance

the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to Sherette.funncoleman@hhs.gov, or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Standards for Privacy of Individually Identifiable Health Information and Supporting Regulations at 45 CFR Parts 160 and 164 (Extension)—OMB No. 0990-0294 Office of Civil Rights.

Abstract: The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996. The final regulation requires covered entities (as defined in the regulation) to maintain strong protections for the privacy of individually identifiable health information; to use or disclose this information only as required or permitted by the Rule or with the express written authorization of the individual; to provide a notice of the entity's privacy practices; and to document compliance with the Rule. Respondents are health care providers with health plans, and health care clearinghouses. The affected public includes individuals, public and private businesses, state and local governments.

ESTIMATED ANNUALIZED BURDEN TABLE

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
160.204	Process for Requesting Exception Determinations (states or persons).	40	1	16	640
164.504	Uses and Disclosures—Organizational Requirements	764,799	1	5/60	63,733
164.508	Uses and Disclosures for Which Individual authorization is required.	764,799	1	1	764,799
164.512	Uses and Disclosures for which Consent, Individual Authorization, or Opportunity to Agree or Object is Not Required (for other specified purposes by an IRB or privacy board).	113,524	1	5/60	9,460
164.520	Notice of Privacy Practices for Protected Health Information (health plans).	10,570	1	3/60	529
164.520	Notice of Privacy Practices for Protected Health Information (health care providers—dissemination).	613,000,000	1	3/60	30,650,000
164.520	Notice of Privacy Practices for Protected Health Information (health care providers—acknowledgement).	613,000,000	1	3/60	30,650,000

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
164.522	Rights to Request Privacy Protection for Protected Health Information.	150,000	1	3/60	7,500
164.524	Access of Individuals to Protected Health Information (disclosures).	150,000	1	3/60	7,500
164.526	Amendment of Protected Health Information (requests)	150,000	1	3/60	7,500
164.526	Amendment of Protected Health Information (denials)	50,000	1	3/60	2,500
164.528	Accounting for Disclosures of Protected Health Information	1,080,000	1	5/60	90,000
Total .....	.....	.....	.....	.....	62,254,161

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9-10317 Filed 5-1-09; 8:45 am]

BILLING CODE 4153-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11³/₈% for the quarter ended December 30, 2008. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 28, 2009.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. E9-10202 Filed 5-1-09; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11% for the quarter ended March 31, 2009. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 28, 2009.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. E9-10204 Filed 5-1-09; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Revision of OMB No. 0925-0002, Exp. 9/30/11, "Ruth L. Kirschstein NRSA Individual Fellowship Application and Related Forms"

Summary: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director (OD), the Office of Extramural Research, National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 27, 2009, Vol. 74, No. 38, page 8972 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after September 30, 2011, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Ruth L. Kirschstein NRSA Individual Fellowship Application and Related Forms. *Type of Information Collection Request:* Revision, OMB 0925-0002, Expiration Date 9/30/11. Form Numbers: PHS 416-1, 416-9, 416-5, 416-7, 6031, 6031-1. *Need and Use of Information Collection:* The PHS 416-1 and 416-9 are used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a

national competition. The other related forms (PHS 416–5, 416–7, 6031, 6031–1) are used by these individuals to activate, terminate, and provide for payback of a National Research Service Award. *Frequency of response:* Applicants may submit applications for published receipt dates. If awarded, annual progress is reported and trainees may be appointed or reappointed. *Affected Public:* Individuals or households; businesses or other for profit; not-for-profit institutions; Federal Government; and State, Local or Tribal Governments. *Type of Respondents:* Adult scientific trainees. The annual reporting burden is as follows: *Estimated Number of Respondents:* 34,454; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 3.9; and *Estimated Total Annual Burden Hours Requested:* 132,501. The annualized cost to respondents is estimated at: \$4,637,535.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, OIRA_submission@omb.eop.gov or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: contact Ms. Mikia Currie, Project Clearance Branch, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 3505, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number 301–435–0941, or e-mail your request,

including your address to: [\[curriem@od.nih.gov\]](mailto:curriem@od.nih.gov).

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 28, 2009.

Pam Gilden,

Grants Policy Analyst, OPERA, OER, OD, National Institutes of Health.

[FR Doc. E9–10096 Filed 5–1–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10285]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(iii). This is necessary to

ensure compliance with an initiative of the Administration. If CMS were to comply with the normal clearance procedures, it would not be able to implement its expedited review program on a timely basis as required by the American Recovery and Reinvestment Act of 2009 (ARRA) section 3001(a)(5).

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Request for Expedited Review of Denial of Premium Assistance *Use:* Section 3001 of the ARRA provides "Assistance Eligible Individuals" with the right to pay reduced COBRA premiums. An "assistance eligible individual" is a "qualified beneficiary" who: (1) is eligible for COBRA continuation coverage at any time during the period beginning September 1, 2008 and ending December 31, 2009; (2) elects COBRA coverage; and (3) has a qualifying event for COBRA coverage, that is the employee's involuntary termination during the period beginning September 1, 2008 and ending December 31, 2009.

If individuals request treatment as an assistance eligible individual and are denied such treatment because of their ineligibility for the reduced premium assistance, the Secretary of Health and Human Services must provide for expedited review of the denial upon application to the Secretary in the form and manner the Secretary provides. The Secretary is required to make a determination within 15 business days after receipt of an individual's application for review.

The Request for Expedited Review of Denial of Premium Assistance (the "Application") is the form that will be used by individuals to file their expedited review appeals. Such individuals must complete all information requested on the Application in order to file their review requests with CMS. An Application may be denied if sufficient information is not provided. *Form Number:* CMS–10285 (OMB#: 0938–New); *Frequency:* Reporting—Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 12,000 *Total Annual Responses:* 12,000; *Total Annual Hours:* 12,000. (For policy questions regarding this collection contact Jim Mayhew at 410–786–9244. For all other issues call 410–786–1326.)

CMS is requesting OMB review and approval of this collection by *May 15, 2009*, with a 180-day approval period. Written comments and recommendation will be considered from the public if received by the individuals designated below by the noted deadline below.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995> or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *May 14, 2009*:

1. *Electronically*. You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail*. You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS-10285), Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850; and

OMB Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395-6974.

Dated: April 30, 2009.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E9-10326 Filed 5-1-09; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities Under Emergency Review for the Office of Management and Budget (OMB)

The Health Resources and Services Administration (HRSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested upon publication of this notice for 120 days and the approval foregoes the routine comment period. During the emergency approval period, HRSA will publish a **Federal Register** notice announcing the initiation of a broad 60-day public comment period and begin the process for a routine information collection request. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail paperwork@hrsa.gov or call the HRSA Reports Clearance Officer on (301) 443-1129.

Proposed Project: HRSA/Bureau of Primary Health Care Capital Improvement Program Application Electronic Health Records (EHR) Readiness Checklist (NEW)

The American Recovery and Reinvestment Act (ARRA) provides \$1.5 billion in grants to support construction, renovation and equipment, and the acquisition of health information technology systems, for health centers, including health center controlled networks receiving operating grants under section 330 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 254b). HRSA is requesting emergency processing procedures for the Electronic Health Records (EHR) Readiness Checklist portion of the application because this information is needed before the expiration of the normal time limits under regulations at 5 CFR part 1320 to ensure the timely availability of data to make award determinations for receipt of funds under ARRA. Of the \$1.5 billion, HRSA will award approximately \$850 million, through limited competition grants, for one-time Capital Improvement Program (CIP) grant funding in fiscal year (FY) 2009 to support existing section 330 funded health centers. Funding under this opportunity will address pressing capital improvement needs in health centers, such as construction, repair, renovation, and equipment purchases, including health information technology systems. Applicants must provide information using the EHR Readiness Checklist that demonstrates comprehensive planning and readiness for implementing EHRs.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
EHR Readiness Checklist	568	1	568	.25	568
Total	568	.....	568	.....	568

Dated: April 29, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9-10289 Filed 4-30-09; 11:15 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities Under Emergency Review for the Office of Management and Budget (OMB)

The Health Resources and Services Administration (HRSA) has submitted the following request (see below) for emergency OMB review under the

Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested upon publication of this notice for 120 days and the approval foregoes the routine comment period. During the emergency approval period, HRSA will publish a **Federal Register** notice announcing the initiation of a broad 60-day public comment period and begin the process for a routine information collection request. To request more information on the proposed project or to obtain a copy of the data collection plans and draft

instruments, e-mail paperwork@hrsa.gov or call the HRSA Reports Clearance Officer on (301) 443-1129.

Proposed Project: HRSA/Bureau of Primary Health Care Capital Improvement Program Application National Environmental Policy Act (NEPA) Requirements (NEW)

The American Recovery and Reinvestment Act (ARRA) provides \$1.5 billion in grants to support construction, renovation and equipment, and the acquisition of health information technology systems, for health centers, including health center controlled

networks receiving operating grants under section 330 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 254b). HRSA is requesting emergency processing procedures for the Environmental Information and Documentation portion of the application because this information is needed before the expiration of the normal time limits under regulations at 5 CFR part 1320 to ensure the timely availability of data to make award determinations for receipt of funds under ARRA. Of the \$1.5 billion, HRSA will award approximately \$850 million, through limited competition grants, for one-time Capital Improvement Program

(CIP) grant funding in fiscal year (FY) 2009 to support existing section 330 funded health centers. Funding under this opportunity will address pressing capital improvement needs in health centers, such as construction, repair, renovation, and equipment purchases, including health information technology systems. Applicants must provide information and assurance of compliance with the National Environmental Policy Act of 1969 (NEPA) on the Environmental Information and Documentation (EID) checklist.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NEPA EID Checklist	1,134	1	1,134	1	1,134
Total	1,134	.....	1,134	.....	1,134

Dated: April 29, 2009.

Alexandra Hutfinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9-10285 Filed 4-30-09; 11:15 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Indian Health Service Director's Three Initiative Best Practice, Promising Practice, and Local Effort Form

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917-NEW, "Indian Health Service Director's Three Initiative Best Practice, Promising

Practice, and Local Effort Form." Type of Information Collection Request: Three year approval of this new information collection, 0917-NEW, "Indian Health Service Director's Three Initiative Best Practice, Promising Practice, and Local Effort (BPPPLE) Form." Form(s): The Indian Health Service BPPPLE form. Need and Use of Information Collection: The Indian Health Service (IHS) goal is to raise the health status of the American Indian and Alaska Native (AI/AN) people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission, the Director's Three Initiative was launched which is comprised of Health Promotion and Disease Prevention (HP/DP), Behavioral Health (BH) and Chronic Care (CC). The Director's Three Initiative is linked together in their aim to reduce health disparities and improve the health and wellness among the AI/AN populations through a coordinated and systematic approach to enhance health promotion, and chronic disease and mental health prevention methods at the local, regional, and national levels.

To provide the product/service to IHS, Tribal, and Urban (I/T/U) programs, the Director's Three Initiative works together to develop a centralized program database of Best/Promising

Practices (BPP). The purpose of this collection is to develop a database of BPP to be published on the IHS.gov website which will be a resource for program evaluation and for modeling examples of HP/DP, BH, and CC projects occurring in AI/AN communities.

This is a request that OMB approve, under the Paperwork Reduction Act, an IHS information collection initiative to promote submission of "Best and Promising Practices and Local Efforts" among the I/T/U.

All information submitted is on a voluntary basis; no legal requirement exists for collection of this information.

The information collected will enable the Director's Three Initiative program to: (a) Identify evidence based approaches to prevention programs among the I/T/U when no system is currently in place; and (b) Allow the program managers to review BPPPLE occurring among the I/T/U when considering program planning for their community.

Affected Public: Individuals. Type of Respondents: I/T/U organizations program staff.

The table below provides: Types of data collection instruments, Number of respondents, Responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument(s)	Number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
IHS Service Unit, Tribal, and Urban Indian Center Administrators	100	1	20/60	33.3
Total	100	.....	.....	33.3

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852-1627; call non-toll free (301) 443-7899; send via facsimile to (301) 443-9879; or send your e-mail requests, comments, and return address to: betty.gould@ihs.gov.

Comment Due Date: Your comments regarding this information collection are

best assured of having full effect if received within 30 days of the date of this publication.

Dated: April 27, 2009.

Robert G McSwain,

Director, Indian Health Service.

[FR Doc. E9-10048 Filed 5-1-09; 8:45 am]

BILLING CODE 4165-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ORR Financial Status Report for the Cash and Medical Assistance Program.

OMB No.: New Collection.

Description: The Office of Refugee Resettlement (ORR) reimburses, to the extent of available appropriations, certain non-Federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses for the administration the refugee resettlement program at the State level. States (and Wilson/Fish projects; *i.e.*, alternative projects for the administration of the refugee resettlement program) currently submit SF-269 Financial Status data in accordance with 45 CFR part 92 and 45 CFR part 74. This proposed new data collection would replace the current requirement for the SF-269 with a

financial status report form that would collect similar financial status data (*i.e.*, amounts of outlays and obligations) by the four program components: refugee cash assistance, refugee medical assistance, cash and medical assistance administration, and services for unaccompanied refugee minors. This breakdown of financial status data would allow ORR to track program expenditures in greater detail to anticipate any funding issues and to meet the requirements of ORR regulations at CFR 400.211 to collect these data for use in estimating future costs of the refugee resettlement program. ORR must implement the methodology at CFR 400.211 each year after receipt of its annual appropriation to ensure that appropriated funds will be adequate for assistance to entering refugees. The estimating methodology prescribed in the regulations requires the use of actual past costs by program component. In the event that the methodology indicates that appropriated funds are inadequate, ORR must take steps to reduce federal expenses, such as by limiting the number of months of eligibility for Refugee Cash Assistance and Refugee Medical Assistance. This proposed single-page financial status report will allow ORR to collect the necessary data to ensure that funds are adequate for the projected need and thereby meet the requirements of both the Refugee Act and ORR regulations.

Respondents: State governments.

Wilson/Fish Alternative Projects

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR Financial Status Report	58	4	0.50	116

Estimated Total Annual Burden Hours: 116.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the

information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370

L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 29, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9-10133 Filed 5-1-09; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Organ Transplant Infection Detection and Prevention Program, Funding Opportunity Announcement (FOA) CK09-003, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.-3 p.m., June 11, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Organ Transplant Infection Detection and Prevention Program, FOA CK09-003."

Contact Person for More Information:

Wendy Carr, PhD, CDC, 1600 Clifton Road, NE., Mailstop D60, Atlanta, GA 30333, Telephone: (404) 498-2276.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 24, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9-10193 Filed 5-1-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of New Technology To Improve Delivery of Immunizations, Funding Opportunity Announcement (FOA) IP09-005 Initial Review; Development, Implementation and Evaluation of Strategies To Increase Vaccination of Adolescents Affiliated With a Medical Home, FOA IP09-006 Initial Review; Determine the Impact of Strategies To Vaccinate All Children for Influenza in a Practice Setting, FOA IP09-007, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Dates:

8 a.m.-5 p.m., May 21, 2009 (Closed).

8 a.m.-5 p.m., May 22, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Evaluation of New Technology to Improve Delivery of Immunizations, FOA IP09-005;" "Development, Implementation and Evaluation of Strategies to Increase Vaccination of Adolescents Affiliated with a Medical Home, FOA IP09-006;" "Determine the Impact of Strategies to Vaccinate all Children for Influenza in a Practice Setting, FOA IP09-007."

Contact Person for More Information:

Wendy Carr, PhD, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498-2276.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 24, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9-10190 Filed 5-1-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: June 1, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, PhD, Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224. (410) 550-1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 27, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-10099 Filed 5-1-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: June 22–23, 2009.

Time: June 22, 2009, 8 a.m. to 6 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentations; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Time: June 23, 2009, 8:30 a.m. to 12 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301-496-5147, graypp@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/bsa.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and

Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 27, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-10097 Filed 5-1-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0199]

Pediatric Device Consortia Grant Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Office of Orphan Products Development (OOPD) Pediatric Device Consortia Grant Program (PDCGP). The goal of the PDCGP is to promote pediatric device development by providing grants to nonprofit consortia whose business model and approach to device development will either result in, or substantially contribute to, market approval of medical devices designed specifically for use in children. Although administered by the OOPD, this grant program is intended to encompass devices that could be used in all pediatric conditions or diseases, not just rare diseases. The pediatric population (neonates, infants, children, and adolescents) includes patients who are 21 years of age or younger at the time of diagnosis or treatment.

DATES: Important dates are as follows:

1. The application due date is June 15, 2009.
2. The anticipated start date is September 2009.
3. The opening date is May 1, 2009.
4. The expiration date is June 16, 2009.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

Linda C. Ulrich or Debra Y. Lewis, Pediatric Device Consortia Grants Program, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, rm. 6A-55, Rockville, MD 20857, 301-827-3666. Camille Peake, Division of

Acquisition Support and Grants, Office of Acquisitions & Grant Services (HFA-500), Food and Drug Administration, 5630 Fishers Lane, rm. 2139, Rockville, MD 20852, 301-827-7175.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at <http://grants.nih.gov/grants/guide/index.html>.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA-FD-009-007
Catalog of Federal Domestic Assistance
Number 93.103

A. Background

The development of pediatric medical devices currently lags 5 to 10 years behind the development of devices for adults. Children differ from adults in terms of their size, growth, development, and body chemistry, adding to the challenges of pediatric device development. There currently exists a great need for medical devices designed specifically with children in mind. Such needs include the original development of pediatric medical devices, as well as the specific adaptation of existing adult devices for children. Thus, as part of the 2007 Food and Drug Administration Amendments Act (FDAAA) legislation, Congress passed the Pediatric Medical Device Safety and Improvement Act of 2007. Section 305 of FDAAA requires the Secretary of Health and Human Services to provide demonstration grants or contracts to nonprofit consortia to promote pediatric device development.

B. Research Objectives

The goal of FDA's PDCGP is to promote pediatric device development by providing grants to nonprofit consortia. The consortia will facilitate the development, production, and distribution of pediatric medical devices by:

- (1) Encouraging innovation and connecting qualified individuals with pediatric device ideas with potential manufacturers;
- (2) Mentoring and managing pediatric device projects through the development process, including product identification, prototype design, device development, and marketing;
- (3) Connecting innovators and physicians to existing Federal and non-Federal resources;
- (4) Assessing the scientific and medical merit of proposed pediatric device projects; and
- (5) Providing assistance and advice as needed on business development,

personnel training, prototype development, post-marketing needs, and other activities.

C. Eligibility Information

The grants are available to any domestic, public or private, nonprofit entity (including State and local units of Government). Federal agencies that are not part of the Department of Health and Human Services (HHS) may apply. Agencies that are part of HHS may not apply. Organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1968, are not eligible to receive grant awards.

II. Award Information/Funds Available

A. Award Amount

The estimated amount of funds available for support of 1 to 4 consortia awarded as a result of this announcement is \$2 million for fiscal year 2009. Because the nature and scope of the proposed research will vary from application to application, it is anticipated that the size and duration of each award will also vary. Although the financial plans of FDA provide support for this program, awards under this funding opportunity are contingent upon the availability of funds and the receipt of a sufficient number of meritorious applications.

B. Length of Support

Grants will be awarded on a competitive basis up to \$2,000,000 in total costs (direct costs plus indirect costs) per year for up to 2 years.

III. How to Submit a Paper Application

To submit a paper application in response to this FOA, applicants should first review the full announcement located at <http://grants.nih.gov/grants/guide/index.html>. Persons interested in applying for a grant may obtain an application at <http://grants.nih.gov/grants/forms.htm>. For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register with Central Contractor Registration

These steps can be found at http://www07.grants.gov/applicants/organization_registration.jsp. Submit paper applications by express mail to Camille Peake. (See the **FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT** section.)

Dated: April 29, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-10329 Filed 5-1-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N-300, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of information collection under review: Form N-300, Application to File Declaration of Intention; OMB Control No. 1615-0078.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 11, 2009, at 74 FR 6915 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 3, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202-395-6974 or via e-mail at oir_submission@omb.eop.gov.

When submitting comments by e-mail please make sure to add OMB Control Number 1615-0078. Written comments and suggestions from the public and

affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-300. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours.

If you need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Web site at: <http://www.regulations.gov/search/index.jsp>.

If additional information is required contact: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529-2210, (202) 272-8377.

Dated: April 29, 2009.

Stephen Tarragon,

*Deputy Chief, Regulatory Products Division,
U.S. Citizenship and Immigration Services,
Department of Homeland Security.*

[FR Doc. E9-10169 Filed 5-1-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Guam Visa Waiver Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0126; Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Guam Visa Waiver Agreement (Form I-760). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 7910) on February 20, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 3, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on

proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Guam Visa Waiver Agreement.

OMB Number: 1651-0126.

Form Number: I-760.

Abstract: This Agreement is intended to ensure that every alien transported to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) meets all of the stipulated eligibility criteria prior to departure to Guam or the CNMI. It also outlines the requirements to be satisfied by the carrier.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 2.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

Dated: April 29, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-10152 Filed 5-1-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Guam Visa Waiver Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0126; Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Guam Visa Waiver Agreement (Form I-760). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 7910) on February 20, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 3, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component,

including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Guam Visa Waiver Agreement.

OMB Number: 1651-0126.

Form Number: I-760.

Abstract: This Agreement is intended to ensure that every alien transported to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) meets all of the stipulated eligibility criteria prior to departure to Guam or the CNMI. It also outlines the requirements to be satisfied by the carrier.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 2.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

Dated: April 29, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-10147 Filed 5-1-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Camin Cargo Control, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Camin Cargo Control, Inc., 977 Hostos Avenue, Ponce, PR 00716, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The approval of Camin Cargo Control, Inc., as commercial gauger became effective on February 5, 2009. The next triennial inspection date will be scheduled for February 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: April 17, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-10144 Filed 5-1-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 1300 North Delaware St., Paulsboro, NJ 08066, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals

and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on February 19, 2009. The next triennial inspection date will be scheduled for February 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: April 17, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-10146 Filed 5-1-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2009-0275]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet in Texas City, Texas to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The Committee will meet on Tuesday, May 19, 2009 from 9 a.m. to

12 p.m. The Committee's working groups will meet on Tuesday, May 5, 2009 from 9 a.m. to 12 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 12, 2009. Requests to have a copy of your materials distributed to each member of the committee or working group should reach the Coast Guard on or before May 12, 2009.

ADDRESSES: The full Committee will meet at Marine Safety Unit Galveston, 3101 FM 2004, Texas City, Texas 77591, (409) 978-2700. The working group meeting will be held at same location above. Send written material and requests to make oral presentations to Lieutenant Sean Hughes, Assistant to the Alternate Designated Federal Officer of HOGANSAC, 9640 Clinton Drive, Houston, Texas 77029. This notice is available in our online docket, USCG-2009-0275, at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Commander Hal R. Pitts, Alternate Designated Federal Officer (ADFO) of HOGANSAC, telephone (713) 671-5164, e-mail hal.r.pitts@uscg.mil or Lieutenant Sean Hughes, Assistant to the ADFO, telephone (713) 678-9001, e-mail sean.p.hughes@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2. (Pub. L. 92-463).

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda is as follows:

(1) Opening remarks by the Committee Sponsor's representative, Designated Federal Officer (CAPT Diehl) and Chairperson (Ms. Tava Foret).

(2) Approval of the February 5, 2009 minutes.

(3) Old Business:

(a) Navigation Operations (NAVOPS)/Maritime Incident Review subcommittee report;

(b) Dredging subcommittee report;

(c) Technology subcommittee report;

(d) Waterways Safety and Utilization subcommittee report;

(e) HOGANSAC Outreach subcommittee report;

(f) Commercial Recovery Contingency (CRC) subcommittee report;

(g) Area Maritime Security Committee (AMSC) Liaison's report.

(4) New Business: Transportation Workers Identification Card (TWIC) Update/Status.

Working Groups Meeting. The tentative agenda for the working groups meeting is as follows:

(1) Presentation by each working group of its accomplishments and plans for the future;

(2) Review and discuss the work completed by each working group;

(3) Put forth any action items for consideration at full committee meeting.

Procedural

Both meetings are open to the public. Please note that meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Coast Guard no later than May 12, 2009. Written material for distribution at a meeting should reach the Coast Guard no later than May 12, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meetings, please submit 19 copies to the Coast Guard no later than May 12, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the ADFO or Assistant to the ADFO as soon as possible.

Dated: April 24, 2009.

J.R. Pasch,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. E9-10344 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5285-N-16]

Notice of Proposed Information Collection: Comment Request; Budget-Based Rent Increases

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 6, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail Lillian_L_Deitzer@HUD.gov or telephone (202) 402-8048.

FOR FURTHER INFORMATION CONTACT:

Audrey Hinton, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 402-2691 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Budget-Based Rent Increases.

OMB Control Number, if applicable: 2502-0324.

Description of the need for the information and proposed use: This information is necessary to allow certain owners of multifamily housing projects to plan for expected increases in expenditures. The information will be used to determine the reasonableness of rent increases.

Agency form numbers, if applicable: HUD-92547-A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 12,218 generating approximately 12,218 annual responses; the frequency of responses is

annually; the estimated time to prepare the response is estimated at 5 hours, and the estimated total number of hours needed to prepare the information collection is 61,090.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 24, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–10183 Filed 5–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–17]

Notice of Proposed Information Collection: Comment Request; Pre-Foreclosure Sale Procedure

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: July 6, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail Lillian_L_Deitzer@HUD.gov or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 x2419 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Pre-Foreclosure Sale Procedure.

OMB Control Number, if applicable: 2502–0464.

Description of the need for the information and proposed use: The respondents are mortgagees/loan servicers, homeowners, counselors, and real estate professionals who, are attempting to sell a homeowners property prior to foreclosure. The information collection records the process from the homeowner's application to participate in the program and the mortgagee's approval, to HUD's review and approval to the specifics of the sale. Homeowners participating in the program may also receive housing counseling, and a confirmation that counseling is available must be documented.

Agency form numbers, if applicable: HUD–90035, HUD–90041, HUD–90045, HUD–90051, & HUD–90052.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 7,404 the number of respondents is 30,010 generating approximately 40,950 annual responses; the frequency of response is on occasion, and the estimated time needed to prepare the response varies from three minutes to 35 minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 24, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–10185 Filed 5–1–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–04]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009; Rural Housing and Economic Development Program (RHED)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its website of the application information, submission deadlines, funding criteria, and other requirements for the FY2009 Rural Housing and Economic Development (RHED) Program NOFA. The Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009) makes available approximately \$26 million in RHED funds, to remain available until expended, and this appropriation is to be competitively awarded by September 1, 2009. Applicants for RHED assistance must address the requirements established by HUD's Fiscal Year 2009 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the HUD's FY2009 NOFAs for Discretionary Programs published on December 29, 2008 (73 FR 79548), as amended on April 16, 2009 (74 FR 17685). Applicants should take particular note that they must follow the application submission instructions contained in the FY2009 RHED NOFA and not use those in the General Section. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the HUD Web site at <http://www.hud.gov/RHED>.

FOR FURTHER INFORMATION CONTACT: For information concerning the RHED program, contact a Community Planning and Development Specialist, Office of Rural Housing and Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7137, Washington, DC 20410–7000; telephone 202–708–2290 (this is not a toll-free

number) or 1-877-787-2526 (this is a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800-877-8339.

Dated: April 28, 2009.

Nelson R. Bregón,

*General Deputy Assistant Secretary for
Community Planning and Development.*

[FR Doc. E9-10186 Filed 4-29-09; 4:15 pm]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5300-N-08]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009; Brownfields Economic Development Initiative (BEDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the application information, submission deadlines, funding criteria, and other requirements for the FY2009 Brownfields Economic Development Initiative (BEDI) NOFA. The BEDI NOFA makes approximately \$20 million in assistance available, combining assistance appropriated by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111-8, approved March 11, 2009) and the Department of Housing and Urban Development Appropriations Act, 2008 (Pub. L. 110-116, approved December 26, 2007). All BEDI grants must be used in conjunction with a new Section 108-guaranteed loan commitment. Applicants for BEDI assistance must address the requirements established by HUD's Fiscal Year 2009 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the NOFA published on December 29, 2008 (73 FR 79548), as amended on April 16, 2009 (74 FR 17685). Applicants should take particular note that they should follow the application submission instructions contained in this NOFA and not use those in the General Section. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the HUD Web site at <http://www.HUD.gov/BEDI>.

FOR FURTHER INFORMATION CONTACT: David Kaminsky, Office of Economic

Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7140, Washington, DC 20410; telephone 202-402-4612, or Robert Duncan, telephone 202-402-4681 (these are not toll-free numbers). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800-877-8339.

Dated: April 28, 2009.

Nelson R. Bregón,

*General Deputy Assistant Secretary for
Community Planning and Development.*

[FR Doc. E9-10189 Filed 4-29-09; 4:15 pm]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-19155-16; AK-964-1410-KC-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of modified decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the decision approving lands for conveyance to Doyon, Limited, notice of which was published in the Federal Register on February 23, 2009, is modified to include Secs. 34 and 35 in the legal description of T. 10 S., R. 10 E., Kateel River Meridian, Alaska. Notice of the modified decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 3, 2009 to file an appeal on the issue in the modified decision.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights. Except as modified, the decision, notice of which was given February 23, 2009 is final.

ADDRESSES: A copy of the modified decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at

ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jenny M. Anderson,

*Land Law Examiner, Land Transfer
Adjudication I.*

[FR Doc. E9-10129 Filed 5-1-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-21901-62, F-21901-63, F-21903-82, F-21903-84, F-21903-95, F-21905-50; AK-964-1410-KC-P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Ruby and Tanana, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 5 N., R. 25 W.,

Secs. 1 to 36, inclusive.

Containing approximately 23,003 acres.

Kateel River Meridian, Alaska

T. 6 S., R. 19 E.,

Secs. 1 to 4, inclusive;

Secs. 9 to 16, inclusive;

Secs. 21 to 28, inclusive;

Secs. 31 to 36, inclusive.

Containing approximately 16,614 acres.

T. 7 S., R. 19 E.,

Secs. 1 to 6, inclusive.

Containing approximately 3,816 acres.

T. 6 S., R. 20 E.,

Secs. 4 to 9, inclusive;

Secs. 16 to 21, inclusive;

Secs. 27 to 30, inclusive.

Containing approximately 10,080 acres.

Aggregating approximately 53,513 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 3, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9-10130 Filed 5-1-09; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R4-R-2009-N0042; 40136-1265-0000-S3]

Ernest F. Hollings ACE Basin National Wildlife Refuge, Charleston, Beaufort, Colleton, and Hampton Counties, SC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Ernest F. Hollings ACE Basin National Wildlife Refuge (ACE Basin NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the Final CCP.

DATES: To ensure consideration, we must receive your written comments by June 3, 2009.

ADDRESSES: Send comments, questions, and requests for information to: Mr. Van Fischer, Natural Resource Planner, South Carolina Lowcountry Refuge Complex, 5801 Highway 17 North, Awendaw, SC 29429. A copy of the

Draft CCP/EA is available on both compact disc and hard copy, and it may be accessed and downloaded from the Service's Internet site: <http://southeast.fws.gov/planning>.

FOR FURTHER INFORMATION CONTACT: Mr. Van Fischer, Natural Resource Planner; telephone: 843/928-3264; e-mail: van_fischer@fws.gov.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for ACE Basin NWR. We started the process through a notice in the **Federal Register** on January 3, 2007 (72 FR 141).

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

ACE Basin NWR was established on September 20, 1990, and was renamed the Ernest F. Hollings ACE Basin National Wildlife Refuge on May 16, 2005. The refuge is a partner in the ACE Basin Task Force, a coalition consisting of the Service, South Carolina Department of Natural Resources, Ducks Unlimited, The Nature Conservancy, The Low Country Open Land Trust, Mead Westvaco, and private landowners. The refuge's two separate units (Edisto Unit and Combahee Unit) are further broken down into sub-units, with the Edisto Unit containing the Barrelville, Grove, and Jehossee sub-units, and the Combahee Unit containing the Bonny Hall, Combahee Fields, and Yemassee sub-units. The refuge is divided into nine management units or compartments, ranging in size

from 350 to 3,355 acres. Compartment boundaries are established along geographic features that can be easily identified on the ground (*i.e.*, rivers, roads, and trails).

Serving as a basis for each alternative, goals and sets of objectives were developed to help fulfill the purposes of the refuge and the mission of the National Wildlife Refuge System. These alternatives represent different approaches to managing the refuge, while still meeting purposes and goals. Plans will be revised at least every 15 years, or earlier, if monitoring indicates management changes are warranted.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative C as the proposed alternative. A full description is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Continuation of Current Refuge Management (No Action)

This alternative represents no change from current management of the refuge and provides a baseline. Management emphasis would continue to focus on maintaining existing managed wetlands for wintering waterfowl, shorebirds, and wading birds. Primary activities include managing wetland impoundments (primarily historically created "rice fields"), managing old farm fields in a grassland/scrub/shrub mosaic for neotropical migratory birds, basic species monitoring, wood duck banding, and managing moist soil for waterfowl. Alternative A represents the anticipated conditions of the refuge for the next 15 years, assuming current funding, staffing, policies, programs, and activities continue. The other two alternatives are compared to this alternative in order to evaluate differences in future conditions compared to baseline management.

This alternative reflects actions that include managing habitat for resident and wintering waterfowl, nesting bald eagles, foraging wood storks, and overwintering whooping cranes (experimental flock). Further, it reflects actions for maintaining upland and wetland forests; for repairing wetland impoundment control structures (aluminum flash board risers and wooden "rice trunks"), dikes, and internal drainage ditches and canals; for managing habitat for neotropical migratory birds; and for providing wildlife-dependent recreation opportunities. Species monitoring would be limited due to staffing constraints, volunteer assistance, and

limited research interest. Habitat management actions would primarily benefit waterfowl, wading birds, shorebirds, and grassland-associated passerine birds; however, there is limited active management of other species and habitats.

Management coordination would occur between the refuge and the state. Coordination would be limited because of staffing constraints and remain focused on waterfowl management and grassland habitat management, hunting, and fishing. Hunting and fishing would be allowed on the refuge provided that state regulations were followed. Wildlife-dependent uses are allowed on the refuge with all areas open to the public, although some areas are only seasonally open.

The refuge would remain staffed at current levels with periodic interns. Researchers would be accommodated when projects benefit the refuge.

Alternative B: Protection of Trust Resources and State-Listed Species

Alternative B places refuge management emphasis on the protection of trust resources (migratory birds and threatened and endangered species), as well as several state-listed species.

This alternative expands on Alternative A, with a greater amount of active habitat management on the refuge. The focus of this alternative is to enhance and expand suitable habitat under species-specific management, targeted to attract greater numbers of wintering waterfowl and breeding areas for resident wood ducks. The acreage of managed wetlands (enhanced moist-soil management practices) and greentree reservoirs would be increased to accommodate larger waterfowl numbers. Some open fields and scrub/shrub areas on the refuge would be more intensively managed to increase populations of neotropical migratory and breeding songbirds to higher levels than under Alternative A, but limited to maintaining existing areas suitable for these migratory species. There would be an increased effort to control invasive exotic plants.

This alternative proposes to increase monitoring efforts to focus primarily on threatened and endangered species (e.g., wood storks), waterfowl, and other migratory birds, with less effort to address other non-migratory resident species. Under Alternative A, monitoring would focus almost entirely on waterfowl, but does include other species as resources permit. This alternative would provide extensive waterfowl and endangered species monitoring with little additional effort for monitoring other species. Monitoring

efforts would only occur based on available staffing, additional volunteers, and academic research.

Wildlife-dependent uses of the refuge would continue. Hunting and fishing would continue to be allowed and environmental education and interpretation would be enhanced. Interpretive signage would be increased or added to existing nature trails. There would be restricted access to some areas of the refuge that have waterfowl and threatened or endangered species sensitive to disturbance. Interpretation efforts would focus mostly on the primary objectives of waterfowl and other migratory bird management.

The refuge would be staffed at current levels, plus the addition of one forester to increase components of the Forest Management Plan and one public use park ranger. Researchers (enhancement of the existing research partnership with the Nemours Wildlife Foundation) would be accommodated when projects benefit the refuge and focus mostly towards waterfowl habitat and management (old rice fields/moist-soil management units).

Alternative C: Wildlife and Habitat Diversity (Proposed Alternative)

This alternative expands on Alternative A, with a greater amount of effort to manage the refuge to increase overall wildlife and habitat diversity. Although waterfowl, threatened and endangered species, and other migratory birds would remain a focus of management, wetland habitat manipulations would also consider the needs of multiple species, such as marsh and wading birds. Management of upland forests and fields for neotropical migratory birds would be more actively managed than under Alternative B. Landscape level consideration of habitat management would include a diversity of open fields, upland and wetland forests, and additional managed wetlands. Upland loblolly pine plantations (relic industrial forest) would be heavily thinned to encourage multi-strata vegetation composition and hardwood interspersions. More xeric loblolly pine plantations would be converted to longleaf pine savannas and subjected to frequent growing season prescribed fires to favor warm season grasses and forbs, and the potential reintroduction of red cockaded woodpeckers in the ACE Basin Project Area. Multiple species consideration would include species and habitats identified by the South Atlantic Migratory Bird Initiative and the state's Strategic Conservation Plan.

This alternative would expand on the monitoring efforts of Alternative A to

provide additional monitoring of migratory neotropical and breeding songbirds, and other resident species. Monitoring efforts would be increased with the assistance of additional staff, trained volunteers, and academic research. Greater effort would be made to recruit academic researchers to the refuge to study and monitor refuge resources.

Wildlife-dependent uses of the refuge would continue. Hunting and fishing would continue to be allowed. However, hunting would be managed with a greater focus to achieve biological needs of the refuge, such as deer population management and feral hog control. Education and interpretation would be the same as Alternative A, but with additional education and outreach efforts aimed at the importance of landscape and diversity. A significantly greater effort would be made with outreach to nearby developing urban communities and a growing human population. Existing environmental education programs, such as Earth Stewards, conducted in concert with the SEWEE Association (refuge friends group) would be expanded to include additional elementary schools, students, and teachers.

The refuge would be staffed at the 2008 staffing level to enhance all refuge services and management programs. Greater emphasis would be placed on recruiting and training volunteers to facilitate the accomplishment of maintenance programs and other refuge objectives. Refuge biological programs would actively seek funding and researchers to study primarily management-oriented needs. The staff would place greater emphasis on developing and maintaining active partnerships, including seeking grants to assist the refuge in reaching primary objectives.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge

System Improvement Act of 1997, Public Law 105–57.

Dated: March 6, 2009.

Cynthia K. Dohner,
Acting Regional Director.

[FR Doc. E9–10153 Filed 5–1–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundredth Sixty-Eighth Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on June 19, 2009.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meetings (September 22, 2008/ December 1, 2008).
3. Reports of Officers.
4. Reports of Subcommittees.
5. Superintendent's Report.
Update on Dune Shacks.
Improved Properties/Town Bylaws.
Wind Turbines/Cell Towers.
Highlands Center Update.
Alternate Transportation Funding.
Centennial Challenge.
6. Old Business.
7. New Business.
Role of the Advisory Commission in advising the Superintendent on zoning issues.
Bike Trail Planning.
8. Date and agenda for next meeting.
9. Public comment and
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/ written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: April 8, 2009.

George E. Price, Jr.,
Superintendent.

[FR Doc. E9–10161 Filed 5–1–09; 8:45 am]

BILLING CODE 4310–WU–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 18, 2009. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 19, 2009.

J. Paul Loether,
*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

ARKANSAS

Calhoun County

Hampton Cemetery, S. of the jct of US 278 W. and 1st St., Hampton, 09000340

Faulkner County

Oak Grove Cemetery Historic Section, E. Bruce St., approx. .3 mi. E. of the jct of Harkrider St. and Bruce St., Conway, 09000341

CONNECTICUT

Fairfield County

Wall Street Historic District, Roughly bounded by Commerce, Knight, and Wall Sts., W. and Mott Aves., Norwalk, 09000342

Hartford County

South Glastonbury Historic District Boundary Increase, 999–1417 and 1032–1420 Main St.; 6,7 Chestnut Hill Rd., Glastonbury, 09000343

FLORIDA

Duval County

Cummer Gardens, 829 Riverside Ave., Jacksonville, 09000345

Lake County

Witherspoon Lodge No. 111 Free and Accepted Masons (F&AM), (Mount Dora, FL) 1410 N. Clayton St., Mount Dora, 09000346

ILLINOIS

Cook County

B.F. Goodrich Company Showroom, (Motor Row, Chicago, Illinois MPS) 1925 S. Michigan Ave., Chicago, 09000347

KANSAS

Crawford County

S–W Supply Company, 215 E. Prairie, Girard, 09000348
State Bank of Girard, 105 E. Prairie, Girard, 09000349

Douglas County

Ecumenical Christian Ministries Building, 1204 Oread Ave., Lawrence, 09000350

Jackson County

Holton Bath House and Swimming Pool, (New Deal—Era Resources of Kansas MPS) 711 Nebraska Ave., Holton, 09000351

Sedgwick County

Old Mission Mausoleum, 3414 E. 21st St., Wichita, 09000352
Smyser House, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957) 931 Buffum Ave., Wichita, 09000353

Wabaunsee County

Alma Downtown Historic District, Missouri St., 2nd to 5th, Alma, 09000354

MASSACHUSETTS

Plymouth County

WPA Field House and Pump Station, 7–19 Henry Turner Bailey Rd., Scituate, 09000355

MISSISSIPPI

Sunflower County

Indianola Historic District, Roughly bounded by Percy St. on the N., Front to Adair on the W. to Roosevelt, Roosevelt E. to Front Extended and N., Indianola, 09000356

OKLAHOMA

Ottawa County

Miami Downtown Historic District, Roughly 100 block of N. Main, 000 block of S. Main, 000 blocks of Central Ave. and 000 block of SE. A St., Miami, 09000357

Tulsa County

Atlas Life Building, 415 S. Boston Ave., Tulsa, 09000358

OREGON**Benton County**

Willamette Community and Grange Hall,
27555 Greenberry Rd., Corvallis, 09000359

Washington County

Painter's Woods Historic District, Centered
on 15th Ave. and Birch Sts., including
portions of 14th, 13th, 12th Aves., Cedar
and Douglas Sts., Forest Grove, 09000360

PUERTO RICO**Caguas Municipality**

Puente No. 6, (Historic Bridges of Puerto Rico
MPS) SR 798, Km. 1.0, Rio Canas Ward,
Caguas, 09000361

RHODE ISLAND**Providence County**

Blackstone Boulevard-Cole Avenue-Grotto
Avenue Historic District, Along Blackstone
Blvd., Cole Ave., Grotto Ave., Providence,
09000363

SOUTH CAROLINA**Calhoun County**

Lindsay Cemetery, Lindsay Cemetery Rd.,
Due West, 09000364

Pickens County

Structural Science Building, (Clemson
University MPS) Clemson University,
Clemson, 09000365

VIRGINIA**Loudoun County**

Round Hill Historic District, Area within the
Round Hill town limits that is bounded
roughly by VA 7 to the S., Locust St. to the
W., Bridge on E, Round Hill, 09000366

WASHINGTON**Kitsap County**

Coder-Coleman House, 904 Highland Ave.,
Bremerton, 09000367

WISCONSIN**Sheboygan County**

BYRON (schooner) Shipwreck, (Great Lakes
Shipwreck Sites of Wisconsin MPS)
Address Restricted, Oostburg, 09000368

[FR Doc. E9-10167 Filed 5-1-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places;
Weekly Listing of Historic Properties**

Pursuant to (36 CFR 60.13(b,c)) and
(36 CFR 63.5), this notice, through
publication of the information included
herein, is to apprise the public as well
as governmental agencies, associations
and all other organizations and
individuals interested in historic
preservation, of the properties added to,
or determined eligible for listing in, the

National Register of Historic Places from
March 16, to March 20, 2009.

For further information, please
contact Edson Beall via: United States
Postal Service mail, at the National
Register of Historic Places, 2280,
National Park Service, 1849 C St., NW.,
Washington, DC 20240; in person (by
appointment), 1201 Eye St., NW., 8th
floor, Washington DC 20005; by fax,
202-371-2229; by phone, 202-354-
2255; or by e-mail,
Edson_Beall@nps.gov.

Dated: April 29, 2009.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

KEY: State, County, Property Name,
Address/Boundary, City, Vicinity, Reference
Number, Action, Date, Multiple Name

CALIFORNIA**Los Angeles County**

Angelus Funeral Home, 1010 E. Jefferson
Blvd., Los Angeles, 09000146, LISTED, 3/
17/09 (African Americans in Los Angeles)

Fire Station No. 14, 3401 S. Central Ave., Los
Angeles, 09000147, LISTED, 3/17/09
(African Americans in Los Angeles)

Fire Station No. 30—Engine Company No.
30, 1401 S. Central Ave., Los Angeles,
09000148, LISTED, 3/17/09 (African
Americans in Los Angeles)

Lincoln Theater, 2300 S. Central Ave., Los
Angeles, 09000149, LISTED,
3/17/09 (African Americans in Los
Angeles)

Prince Hall Masonic Temple, 1050 E. 50th
St., Los Angeles, 09000150, LISTED, 3/17/
09 (African Americans in Los Angeles)

Second Baptist Church, 1100 E. 24th St., Los
Angeles, 09000151, LISTED,
3/17/09 (African Americans in Los
Angeles)

Twenty-eighth Street YMCA, 1006 E. 28th
St., Los Angeles, 09000145, LISTED, 3/17/
09 (African Americans in Los Angeles)

CONNECTICUT**Hartford County**

Commercial Trust Company Building, 51-55
W. Main St., New Britain, 99000926,
LISTED, 3/17/09

DISTRICT OF COLUMBIA**District Of Columbia State Equivalent**

Simpson, Billy, House of Seafood and Steaks,
3815 Georgia Ave., NW., Washington DC,
09000152, LISTED, 3/17/09

IOWA**Hardin County**

Folkert Mound Group, Address Restricted,
Steamboat Rock vicinity, 09000126,
LISTED, 3/17/09

Johnson County

Wetherby, Isaac A., House, 611 N. Governor,
Iowa City, 09000127, LISTED, 3/17/09

MICHIGAN**Genesee County**

Hotel Durant, 607 E. 2nd Ave., Flint,
09000128, LISTED, 3/17/09

Oakland County

O'Dell, H. Augustus and Agnes Cleveland,
House—Inch House, 1945 Tiverton Rd.,
Bloomfield Hills, 09000129, LISTED, 3/17/
09

Shiawassee County

Durand High School, 100 W. Sycamore St.,
Durand, 09000130, LISTED,
3/17/09

MISSISSIPPI**Coahoma County**

Woolworth Building, 207 Yazoo Ave.,
Clarksdale, 09000110, LISTED,
3/19/09

NEBRASKA**Douglas County**

Federal Office Building, 106 S. 15th St.,
Omaha, 09000131, LISTED, 3/17/09

RHODE ISLAND**Providence County**

Taft, Moses, House, 111 E. Wallum Lake Rd.,
Burrillville, 08000718, LISTED, 3/20/09

TENNESSEE**Lawrence County**

Garrett House, 205 S. Military Ave.,
Lawrenceburg, 09000137, LISTED,
3/17/09

TEXAS**Comal County**

Faust Street Bridge, Connecting Faust and
Porter Streets at the Guadalupe River, New
Braunfels, 09000138, LISTED, 3/17/09
(Historic Bridges of Texas MPS)

Johnson County

Wright Building, 1 E. James St., Cleburne,
09000139, LISTED, 3/17/09

McLennan County

Waco High School, 815 Columbus, Waco,
09000140, LISTED, 3/17/09

VIRGINIA**Winchester Independent City**

Mount Hebron Cemetery and Gatehouse, 305
E. Boscawen St., Winchester, 09000163,
LISTED, 3/20/09

[FR Doc. E9-10165 Filed 5-1-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[LLNML0000 L12200000.BY0000]****Emergency Closure to Recreational and Target Practice Shooting on Public Lands Along Dog Canyon Road in Central Otero County, Las Cruces District Office, NM****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of emergency closure.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces District Office is implementing the following closure to recreational and target practice shooting to provide for public safety near residential areas and the Oliver Lee Memorial State Park. The closure is needed in order to prevent damage to property or life in the vicinity of the gravel pit and Dog Canyon Road in central Otero County, New Mexico.

DATES: This closure is effective on May 4, 2009 and shall remain in effect for no more than 2 years, until which time the BLM will, through public involvement, develop long-term management resolution of the safety issue in this area.

FOR FURTHER INFORMATION CONTACT: Tom Phillips, Supervisory Recreation/Cultural Resources Specialist, 1800 Marquess Street, Las Cruces, NM 88005; or call (575) 525-4300.

SUPPLEMENTARY INFORMATION:

1. Public Land in T. 18 S., R. 10 E., section 17, Dog Canyon Road, Otero County NM, totaling 200 acres. Discharging of firearms for recreational or target practice shooting is prohibited in this 200 acre parcel.

2. This closure does not affect the ability of local, State, or Federal officials in the performance of their duties in the area, including the discharge of firearms in the performance of their official duties.

3. This notice will be posted along the public roads where this closure is in effect.

4. The following persons are exempt from this closure order:

- a. Federal, State, or local law enforcement officers, while acting within the scope of their official duties.
- b. Any person with a current legal New Mexico hunting license in his/her possession and hunting in accordance with State law.

Violations of these closures and restrictions are punishable by fines not to exceed \$1,000 and/or imprisonment not to exceed one year. These actions are taken to prevent impacts to soils,

native vegetative resources, wildlife habitat, cultural resources, and scenic values, and to protect public health and safety.

Copies of this closure order and maps showing the location of the routes are available from the Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005.

Authority: 43 CFR 8364.1 and 18 U.S.C. 3551 (Sentencing Reform Act of 1984).

Bill Childress,*Las Cruces District Manager.*

[FR Doc. E9-10127 Filed 5-1-09; 8:45 am]

BILLING CODE 4310-VC-P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[LLNVSO0520.L10100000.MU0000; 9-08807; TAS: 14X1109]****Temporary Closure at Stuart Ranch, Clark County, NV****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of closure.

SUMMARY: The Bureau of Land Management (BLM) is establishing a temporary closure for overnight camping, target shooting, and vehicular traffic on public land in the Stuart Ranch area northeast of Moapa, Nevada. The area will be open for day use only. This closure does not apply to hunting under the laws and regulations of the State of Nevada. This closure is being implemented to ensure public safety and health and to prevent further environmental degradation. This closure is authorized under the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 and 43 CFR 8364.1.

DATES: This closure will be in effect beginning May 4, 2009 and will remain in effect until a management plan for Stuart Ranch is completed or up to a period of two years, whichever is sooner.

FOR FURTHER INFORMATION CONTACT:

Chief Ranger Erika Schumacher, (702) 515-5030 or

Erika_Schumacher@blm.gov. People seeking information about BLM's management planning for this area may contact Sarah Peterson, (702) 515-5154 or *Sarah_Peterson@blm.gov*.

SUPPLEMENTARY INFORMATION: The following activities are restricted under this temporary closure: target shooting; overnight camping; and vehicular traffic. The public lands affected by the closure include:

Mount Diablo Meridian, Nevada

T. 13 S., R. 65 E. (Parcel 1)

Sec. 1, Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$; Lot 1

Excepting there from the 100 foot wide strip of land conveyed to the San Pedro Los Angeles and Salt Lake Railroad Company in document number U-536 recorded December 3, 1903 in the Official Records of Lincoln County, Nevada. Excepting there from the 100 foot wide strip of land conveyed to the San Pedro Los Angeles and Salt Lake Railroad Company in document number 2048 recorded November 22, 1910 in the Official Records of Clark County, Nevada. Excepting there from a strip of land encompassing 3.65 acres conveyed to the Los Angeles and Salt Lake Railroad in Book 3 Misc., Pages 107 and 106, recorded March 11, 1922 in the Official Records of Clark County, Nevada.

T. 13 S., R. 66 E.,

Sec. 6, Lot 5

T.13 S., R. 65 E., (Parcel 2)

Sec. 1, E $\frac{1}{2}$ SE $\frac{1}{4}$

T. 13 S., R. 66 E.,

Sec. 6, Lots 6 and 7 excepting the road leading to Davies Springs in the Mormon Mountain Wilderness in Lot 7 will be open to vehicle traffic.

The aggregate area described contains 278 acres, more or less.

The BLM acquired the Stuart Ranch property in October 2007 to protect environmentally sensitive resources, including an extensive riparian corridor along a perennial reach of Meadow Valley Wash. The corridor is habitat for the Federally-listed endangered Southwestern Willow Flycatcher and two state listed sensitive fish species, the Meadow Valley Wash desert sucker and Meadow Valley Wash speckled dace. The wash flows perennially and supports a healthy and vigorous riparian area full of cottonwoods and willows. Past land uses degraded the landscape, including mining, agriculture and effects from flooding in 2005. Target shooting increased when the property came into public ownership, resulting in damage to sensitive cultural resources on the property. The BLM will restore the site to a natural condition, including enhancement and restoration of the riparian corridor, ephemeral washes and uplands. The closure is needed to protect environmentally sensitive resources from ongoing impacts until a plan is developed to determine how the area will be restored and managed.

The BLM prepared an environmental assessment (EA) on the proposed closure. Identified concerns included off-highway vehicle use in sensitive areas, lack of law enforcement, reduction of access for the public and disabled persons, and closing a route to Davies Springs in the Mormon Mountain Wilderness. These concerns were addressed in the EA and changes

were made to the proposed action, specifically the construction of a fence to allow access to Davies Springs with the closure in place. The Decision Record and Finding of No Significant Impact were signed on December 17, 2008.

The BLM will post closure signs at main entry points to this area. Maps of the closure area are available at the BLM Southern Nevada District Office.

Violation of any of the terms, conditions or restrictions contained in this closure order may subject the violator to citation or arrest with a penalty of fine or imprisonment or both as specified by law.

Penalties: Violation of any regulations in this part by a member of the public is punishable by a fine not to exceed \$1000 and/or imprisonment not to exceed 12 months. Exemptions: Any Federal, State, or local officer or employee in the scope of their duties. Members of any organized rescue or fire-fighting force in performance of an official duty. Any person authorized in writing by the BLM.

Authority: 43 CFR 8364.1.

Dated: February 19, 2009.

Mary Jo Rugwell,

Southern Nevada District Manager.

[FR Doc. E9-10128 Filed 5-1-09; 8:45 am]

BILLING CODE 1430-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L19200000.ET0000; NMNM 117830]

Correction to Public Land Order No. 7724; Withdrawal of Public Land for Customs and Border Protection; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction to Public Land Order.

SUMMARY: This notice contains a correction to the Public Land Order No. 7724 published in the **Federal Register** [74 FR No. 64, page 15518] on Monday, April 6, 2009, under the **ADDRESSES**.

ADDRESSES: The heading, the U.S. Department of Homeland Security, Customs and Border Protection should read: the U.S. Department of Homeland Security, Customs and Border Protection, 3300 J Street, Deming, New Mexico 88030.

FOR FURTHER INFORMATION CONTACT: Lori Allen, Bureau of Land Management, Las Cruces District Office, 1800 Marquess

Street, Las Cruces, New Mexico or at (575) 525-4454.

Bill Childress,

District Manager, Las Cruces.

[FR Doc. E9-10126 Filed 5-1-09; 8:45 am]

BILLING CODE 4310-VC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-957-1420-BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709-1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion east boundary, a portion of the subdivisional lines, and the 1898 meander lines of the Snake River in section 25, and the subdivision of section 25, and the metes-and-bounds survey of lot 10, in section 25, in T. 10 S., R. 19 E., Boise Meridian, Idaho, Group Number 1257, was accepted January 27, 2009.

The plat representing the dependent resurvey of portions of the south and west boundaries, and a portion of the subdivisional lines, and the subdivision of sections 31 and 32, T. 15 S., R. 36 E., Boise Meridian, Idaho, Group Number 1260, was accepted March 4, 2009.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 5 and 8, T. 16 S., R. 36 E., of the Boise Meridian, Idaho, Group Number 1261, was accepted March 4, 2009.

The plat constituting the entire survey record of the remonumentation of the Boise Meridian Initial Point, Townships 1 North and 1 South, Ranges 1 East and 1 West, Boise Meridian, Idaho, Group Number 1000, was accepted March 12, 2009. This survey was executed at the request of the USDA Forest Service to meet certain administrative and

management purposes. The lands surveyed are: The plat representing the dependent resurvey of portions of the west and north boundaries, and subdivisional lines, and the subdivision of sections 20 and 21, T. 15 S., R. 38 E., of the Boise Meridian, Idaho, Group Number 1258, was accepted March 19, 2009.

This survey was executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are: The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the metes-and-bounds surveys of portions of the former Utah and Northern Railroad and Oregon short line railroad right-of-way (currently operated by Union Pacific Railroad) within the city of McCammon, Idaho, and along the routes going north, south, and east, and the metes-and-bounds survey of the Oregon Short Railroad Company, Oregon Branch, waterline, within sections 12 and 13, T. 9 S., R. 36 E., Boise Meridian, Idaho, Group Number 1251, was accepted February 20, 2009.

Dated: April 3, 2009.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. E9-10148 Filed 5-1-09; 8:45 am]

BILLING CODE 4310-GG-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-675]

In the Matter of: Certain Wireless Communications Devices and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 25, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SPH America, LLC of Vienna, Virginia. An amended complaint was filed on April 17, 2009. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communications devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. RE 40,385 and 5,960,029. The complaint further alleges

that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 28, 2009, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless communications devices and components thereof that infringe one or more of claims 20-26, 31-33, 43, 48, 51, 53-55, 57-74, 76-80, 82-87, 89-225, and 227-287 of U.S. Patent No. RE 40,385 and claims 1-5 and 14-18 of U.S. Patent No. 5,960,029, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SPH America, LLC, 8133 Leesburg, Pike, Suite 640, Vienna, VA 22182.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kyocera Corporation, 6 Takeda Tobadono-cho, Fushimi-ku, Kyoto 612-8501, Japan.

Kyocera Wireless Corporation, 0300 Campus Point Drive, San Diego, CA 92121.

Kyocera Sanyo Telecom, Inc., 2125 Burbank Boulevard, Suite 100, Woodland Hills, CA 91367.

MetroPCS Communications, Inc., 2250 Lakeside Boulevard, Richardson, TX 75082.

Metro PCS Wireless, Inc., 8144 Walnut Hill Lane, Suite 800, Dallas, TX 75231.

Sprint Nextel Corporation, 6200 Sprint Parkway, Overland Park, KS 66251. América Móvil, S.A.B. de C.V., Lago Alberto 366, Colonia Anáhuac, Mexico D.F., C.P. 11320, Mexico.

TracFone Wireless, Inc., 9700 NW 112th Avenue, Miami, FL 33178.

Virgin Mobile USA, Inc., 10 Independent Boulevard, Warren, NJ 07059.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and (3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the

right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against a respondent.

Issued: April 28, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-10109 Filed 5-1-09; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0277]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Needs Assessment Survey.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 34, page 8110, on February 23, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 3, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Pamela Leupen, Director, Technical Assistance, Publications, and Information Resources, Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* OVC TTAC Needs Assessment Survey.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number(s): NA. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* *Primary:* State, Local or Tribal. *Other:* Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. *Abstract:* The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Needs Assessment Survey is designed to collect the data necessary to continuously improve customer service intended to meet the needs of the victim services field. OVC TTAC will send the form to individuals employed at agencies and programs providing services to victims of crime. The purpose of this data collection will be to identify gaps in training among victims service providers; methods for meeting the issues and challenges voiced by victim service providers; the context in which services are delivered and received; and emerging issues and trends within the victims service community. The data will then be used to advise OVC and OVC TTAC on ways to improve the support it provides to the victims services field at-large.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond/reply: There are approximately 1,500 respondents who will each require an average of 20–30 minutes to respond to this form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 750 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 28, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–10131 Filed 5–1–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0243]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Grants Management System Online Application.

The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was published in the **Federal Register** Volume 74, Number 36, page 8569–8570 on February 25, 2009, allowing for a 60 day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 3, 2009. This process is in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be

submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Grants Management System Online Application.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: There is no form number, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:*

Primary: The primary respondents are State, Local or Tribal Governments applying for grants. GMS is used to implement the statutory requirements of the Grant Management System (GMS) Online Application; Grant Adjustment Notice (GAN); Progress and Financial Reports of applications, awards, and closeouts.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond to both forms: An estimated 34,097 grantees will respond to Grants Management System Online Application and on average it will take each of them 12 hours to complete the 4 applications.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated public burden

associated with this application is 137,238 hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 28, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-10132 Filed 5-1-09; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review: Comment Request

April 29, 2009.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by May 15, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: DOL_PRA_PUBLIC@dol.gov. Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—EBSA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov. Comments and questions about the ICR listed below should be received 5 days prior to the requested OMB approval date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employee Benefits Security Administration.

Title of Collection: Application to the Department of Labor for Expedited Review of Denial of COBRA Premium Assistance.

OMB Control Number: New.

Frequency of Collection: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Estimated Number of Respondents: 95,000.

Total Estimated Annual Burden Hours: 95,000.

Total Net Estimated Annual Costs Burden (other than hourly costs): \$52,000.

Description: Section 3001 of the American Recovery and Reinvestment Act of 2009 (ARRA) provides "Assistance Eligible Individuals" with the right to pay reduced COBRA premiums for up to 9 months. To be considered an "Assistance Eligible Individual" and receive premium reduction an individual must: (1) Be eligible for, and elect, COBRA continuation coverage, (2) have experienced an involuntary termination of employment which led to the COBRA election opportunity, (3) have experienced the involuntary termination during the period beginning September 1, 2008, and ending December 31, 2009. Individuals who experienced an involuntary termination of employment at any time between September 1, 2008, and February 16, 2009, and were offered, but did not elect, COBRA coverage or who elected COBRA and subsequently dropped it may have the right to an additional 60-day election period.

If individuals request treatment as an assistance eligible individual and are denied such treatment because of their ineligibility for COBRA continuation coverage, ARRA section 3001(a)(5) requires the Secretary of Labor to

provide for expedited review of the denial upon application to the Secretary in the form and manner the Secretary provides. The Secretary of Labor is required to act in consultation with the Secretary of the Treasury and must make a determination within 15 business days after receipt of an individual's application for review.

The "Application to the Department of Labor for Expedited Review of Denial of COBRA Premium Reduction" (the "Application") is the form that will be used by individuals to file their expedited review appeals. Such individuals must complete all information requested on the Application in order to file their review requests with the Department's Employee Benefits Security Administration (EBSA). An Application may be denied if sufficient information is not provided. The ICR relates to the Application.

Why are we requesting Emergency Processing? If the Department were to comply with standard PRA clearance procedures, it would not be able to implement its expedited review program on a timely basis as required by ARRA section 3001(a)(5).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-10142 Filed 5-1-09; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

"Veterans Workforce Investment Program"

May 4, 2009.

AGENCY: Veterans' Employment and Training Service, U.S. Department of Labor.

Announcement Type: New Notice of Availability of Funds and Solicitation for Grant Applications. The full announcement is posted on <http://www.grants.gov>.

Funding Opportunity Number: SGA 09-02.

Key Dates: The closing date for receipt of applications is 30 days after publication via <http://www.grants.gov>.

Funding Opportunity Description

The U.S. Department of Labor (USDOL), Veterans' Employment and Training Service (VETS), announces a grant competition under the Veterans' Workforce Investment Program (VWIP) for Program Year (PY) 2009, as authorized under Section 168 of the Workforce Investment Act (WIA) of

1998. WIA section 168 amended the training programs made available to veterans (see 29 U.S.C. 2913). WIA section 168 authorizes the Department of Labor to make grants to meet the needs for workforce investment activities of veterans with service-connected disabilities, veterans who have significant barriers to employment, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, and recently separated veterans within 48 months of discharge (under conditions other than dishonorable). Veterans who received a "dishonorable" discharge are ineligible for VWIP services. Priority of service for veterans in all Department of Labor funded training programs is established in 38 U.S.C. 4215.

VWIP grants are intended to address two objectives: (a) To provide services to assist in reintegrating eligible veterans into meaningful employment within the labor force; and (b) to stimulate the development of effective service delivery systems that will address the complex employability problems facing eligible veterans.

Projects that support the President's commitment to "Green Energy Jobs" and propose a clear strategy for training and employment in the renewable energy economy, are considered unique and innovative and will receive priority consideration.

The full Solicitation for Grant Application is posted on <http://www.grants.gov> under U.S. Department of Labor/VETS. Applications submitted through <http://www.grants.gov> or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202-693-4570 (not a toll-free number). If you have issues regarding access to the <http://www.grants.gov> Web site, you may telephone the Contact Center Phone at 1-800-518-4726.

Signed at Washington, DC, this 27th day of April 2009.

Cassandra R. Mitchell,
Grant Officer.

[FR Doc. E9-10134 Filed 5-1-09; 8:45 am]

BILLING CODE 4510-79-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of five currently approved information collections. The first information collection is used for requesting permission to use privately owned equipment to microfilm archival holdings in the National Archives of the United States and Presidential libraries. The second information collection is used by participants in training courses and workshops that NARA conducts. NARA needs the information to assess customer satisfaction with course content and delivery and to ensure that the training meets the customer's needs. The third information collection is used for requesting permission to film, photograph, or videotape at a NARA facility for news purposes. The fourth information collection is used for requesting permission to use NARA facilities for events. The fifth information collection is a form, Independent Researcher Listing Application, NA 14115, used by independent researchers to provide their contact information. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 6, 2009 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740-6001; or faxed to 301-713-7409; or electronically mailed to tamee.fechhelm@nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301-837-1694 or fax number 301-837-7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Request to Microfilm Records.

OMB number: 3095-0017.

Agency form number: None.

Type of review: Regular.

Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.

Estimated number of respondents: 2.

Estimated time per response: 10 hours.

Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).

Estimated total annual burden hours: 20.

Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming, and to schedule use of the limited space available for filming.

2. *Title:* National Archives and Records Administration Class Evaluation Forms.

OMB number: 3095-0023.

Agency form number: NA Form 2019.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 6,830.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 569 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training courses and workshops. NARA distributes the approved form to the course coordinators on diskette for

customization of selected elements, shown as shaded areas on the form submitted for clearance.

3. *Title:* Request to film, photograph, or videotape at a NARA facility for news purposes.

OMB number: 3095-0040.

Agency form number: None.

Type of review: Regular.

Affected public: Business or other for-profit, not-for-profit institutions.

Estimated number of respondents: 660.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 110.

Abstract: The information collection is prescribed by 36 CFR 1280.48. The collection is prepared by organizations that wish to film, photograph, or videotape on NARA property for news purposes. NARA needs the information to determine if the request complies with NARA's regulation, to ensure protections of archival holdings, and to schedule the filming appointment.

4. *Title:* Request to use NARA facilities for events.

OMB number: 3095-0043.

Agency form number: NA 16008.

Type of review: Regular.

Affected public: Not-for-profit institutions, individuals or households, business or other for-profit, Federal government.

Estimated number of respondents: 22.

Estimated time per response: 30 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 11.

Abstract: The information collection is prescribed by 36 CFR 1280.80. The collection is prepared by organizations that wish to use NARA public areas for an event. NARA uses the information to determine whether or not we can accommodate the request and to ensure that the proposed event complies with NARA regulations.

5. *Title:* Independent Researcher Listing Application.

OMB number: 3095-0054.

Agency form numbers: NA Form 14115.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 433.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 65.

Abstract: In the past, the National Archives has made use of various lists

of independent researchers who perform freelance research for hire in the Washington, DC, area. We have sent these lists upon request to researchers who could not travel to the metropolitan area to conduct their own research. To better accommodate both the public and NARA staff, the Customer Services Division (NWCC) of the National Archives maintains a listing of independent researchers for the public. All interested independent researchers provide their contact information via this form. Collecting contact and other key information from each independent researcher and providing such information to the public when deemed appropriate will only increase business. This form is not a burden in any way to any independent researcher who voluntarily submits a completed form. Inclusion on the list will not be viewed or advertised as an endorsement by the National Archives and Records Administration (NARA). The listing is compiled and disseminated as a service to the public.

Dated: April 29, 2009.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E9-10323 Filed 5-1-09; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

National Science Board: Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C.1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Wednesday, May 13, 2009, at 8 a.m.; and Thursday, May 14, 2009 at 8 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Rooms 1235 and 1295, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. For your convenience, arrange for a visitor's badge in advance. Call 703-292-7000 to request that your badge be ready for pick-up at the visitor's desk on the day of the meeting.

STATUS: Some portions open, some portions closed.

Open Sessions

May 13, 2009

8 a.m.-8:05 a.m.
8:05 a.m.-11:15 a.m.
8:30 a.m.-8:45 a.m.
8:45 a.m.-9 a.m.
11 a.m.-12 p.m.
1 p.m.-3:45 p.m.

May 14, 2009

8 a.m.-9 a.m.
10 a.m.-11 a.m.
11 a.m.-12 p.m.
1 p.m.-1:30 p.m.
2 p.m.-3:30 p.m.

Closed Sessions

May 13, 2009

9 a.m.-9:30 a.m.
9:30 a.m.-11 a.m.
11:15 a.m.-12 p.m.
1 p.m.-3:45 p.m.

May 14, 2009

9 a.m.-9:30 p.m.
9:30 a.m.-10 a.m.
1:30 p.m.-1:45 p.m.
1:45 p.m.-2 p.m.

AGENCY CONTACT: Dr. Robert E. Webber, rwebber@nsf.gov, (703) 292-7000, <http://www.nsf.gov/nsb/>.

Matters To Be Discussed

Wednesday, May 13, 2009

Open Session: 8 a.m.-8:05 a.m., Room 1235

- Chairman's Remarks.

Committee on Programs and Plans (CPP)

Open Session: 8:05 a.m.-11:15 a.m., Room 1235

- Approval of February 2009 and March 2009 CPP Minutes.
- Committee Chairman's Remarks.
- CPP Task Force on Sustainable Energy (SE)
 - Task Force Co-Chairmen's Remarks.
 - Review of Public Comments on Task Force Draft Report.
 - Discussion of Task Force Draft Report.
- CPP Subcommittee on Polar Issues (SOPI)
 - SOPI Chairman's Remarks.
 - Arctic Post-International Polar Year (IPY) International Partnerships.
 - Antarctic 2009 Season Highlights.
 - Antarctic Liability Legislation.
- *NSB Information Item:* Network for Earthquake Engineering Simulation (NEES) Operations.
 - *NSB Information Item (NSB/CPP-09-19):* Award for Coherent Light Source Development.
 - *NSB Information Item:* Support for Design of Deep Underground Science and Engineering Laboratory (DUSEL).

- *NSB Information Item*: American Recovery and Reinvestment Act of 2009 (ARRA) Award for Purchase of 21 Tesla Magnet.

- *NSB Information Item*: TeraGrid Extension Award.

- *NSB Information Item*: Academic Research Infrastructure (ARI)/Major Research Instrumentation (MRI) Program Announcement(s).

- *Discussion Item*: Issues Raised by CPP for Committee Consideration in FY 2009 and Beyond & Proposed Revision to the Charge to the Committee.

Committee on Programs and Plans (CPP)

Closed Session: 11:15 a.m.–12 p.m., Room 1235

- Committee Chairman's Remarks.
- *NSB Action Item*: Management and Operation of the National Radio Astronomy Observatory (NRAO).

Executive Committee

Open Session: 8:30 a.m.–8:45 a.m., Room 1295

- Approval of Minutes for the February 2009 Meeting.
- Approval of Minutes from the March 31, 2009 Teleconference.
- Executive Committee Chairman's Remarks.
- Approval of Closed Session Agenda Items memo for the August 5–6, 2009 meeting.
- Approval of the Executive Committee Annual Report.
- Approval of the Proposed NSB Prioritization Process.
- Updates or New Business from Committee Members.

Task Force on the NSB 60th Anniversary

Open Session: 8:45 a.m.–9 a.m., Room 1295

- Approval of Minutes for the December 2008 Meeting.
- Task Force Chairman's Remarks.
- Further Discussion and Comments Relating to NSB 60th Anniversary.

ad hoc Committee on Nominations for NSB Class of 2010–2016

Closed Session: 9 a.m.–9:30 a.m., Room 1295

- Nominations Committee Chairman's Remarks.
- Discussion of Nomination Process.

Committee on Strategy and Budget (CSB)

Closed Session: 9:30 a.m.–11 a.m., Room 1295

- CSB Subcommittee on Facilities
 - Subcommittee Chairman's Remarks.

- Discussion of SCF Charge, Workplan, and Anticipated Outcomes.

- Overview of NSF Facilities Planning and MREFC Process.

- Large Facilities Portfolio in GEO/OCE.

- Discussion of GEO/OCE Portfolio.

- Recommendations, Lessons Learned and Discussion of Future SCF Activities.

Committee on Education and Human Resources (CEH)

Open Session: 11 a.m.–12 p.m., Room 1295

- Approval of February 2009 Minutes.
- Update on the Next Generation of STEM Innovators Workshop.
- Discussion of CEH-recommended NSB major activities.

Committee on Science and Engineering Indicators (SEI)

Open Session: 1 p.m.–3:45 p.m., Room 1235

- Approval of February minutes.
- Chairman's remarks.
- Review of S&E Indicators 2010 chapter drafts.
- Discussion of S&E Indicators 2010 Companion Piece Topics.
- Chairman's summary.

Committee on Programs and Plans (CPP)

Closed Session: 1 p.m.–3:45 p.m., Room 1295

- *NSB Action Item*: Ocean Observatories Initiative (OOI).
- *NSB Action Item*: Research Infrastructure Improvement Program (RII) Awards from the Experimental Program to Stimulate Competitive Research (EPSCoR).

Thursday, May 14, 2009

Committee on Audit and Oversight (A&O)

Open Session: 8 a.m.–9 a.m., Room 1235

- Approval of Minutes of the February 24, 2009 Meeting.
- Committee Chairman's Opening Remarks.
- OIG Semiannual Report.
 - Management Response to OIG Semiannual Report.
- Report to the Board on the NSF Merit Review Process, FY 2008.
- Chief Financial Officer's Update including ARRA status update.
- FY2009 Audit Status Report.

Committee on Audit and Oversight (A&O)

Closed Session: 9 a.m.–9:30 a.m., Room 1235

- Pending Investigations.
- Personnel Matters.

Committee on Strategy and Budget (CSB)

Closed Session: 9:30 a.m.–10 a.m., Room 1235

- NSF Budget Planning.

Committee on Strategy and Budget (CSB)

Open Session: 10 a.m.–11 a.m., Room 1235

- Approval of CSB Minutes, February 23 and 24, 2009.
- Committee Chairman's Remarks.
- NSF Long Range Planning.
- NSF Budget Update.
 - FY 2009 Appropriation.
 - FY 2009 American Recovery and Reinvestment Act (ARRA) Update.
- NSF Assistant Director Discussion on ARRA Strategy.

Plenary Open

Open Session: 11 a.m.–12 p.m., Room 1235

- Presentations by 2009 Honorary Award Recipients.
 - Dr. David Charbonneau, Alan T. Waterman Award Recipient.
 - Dr. Roald Hoffmann, NSB Public Service Award Recipient (individual).
 - American Chemical Society/Project SEED, NSB Public Service Award Recipient (group).

Plenary Open

Open Session: 1 p.m.–1:30 p.m., Room 1235

- Presentation by 2009 Honorary Award Recipient.
 - Dr. Mildred Dresselhaus, Vannevar Bush Award Recipient.

Plenary Executive Closed

Closed Session: 1:30 p.m.–1:45 p.m., Room 1235

- Approval of February 2009 Minutes.
- Election for Executive Committee.

Plenary Closed

Closed Session: 1:45 p.m.–2 p.m., Room 1235

- Approval of February 2009 Minutes.
- Awards and Agreements.
- Closed Committee Reports.

Plenary Open

Open Session: 2 p.m.–3:30 p.m., Room 1235

- Approval of February 2009 Minutes.
- Chairman's Report.
- Director's Report.
- NSF Congressional Update.
- Open Committee Reports.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. E9–10247 Filed 4–30–09; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0564]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on February 11, 2009.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Request to Non-Agreement States for Information.

3. *Current OMB approval number:* 3150–0200.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* 8 times per year.

6. *Who will be required or asked to report:* The 16 Non-Agreement States (14 States and 2 territories that have not signed 274(b) Agreements with NRC.)

7. *An estimate of the number of annual responses:* 128.

8. *The estimated number of annual respondents:* 16.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1056.

10. *Abstract:* 10 CFR part 62 sets out the information which must be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security. 10 CFR part 62 also provides that the Commission may grant an exemption from the requirements in this Part upon application of an interested person or upon its own initiative.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 3, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0200), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Gregory Trussell, (301) 415–6445.

Dated at Rockville, Maryland, this 23rd day of April 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–10140 Filed 5–1–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0563]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on February 9, 2009.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Application for NRC Export/Import License, Amendment, or Renewal.

3. *Current OMB approval number:* 3150–0027.

4. *The form number if applicable:* NRC Form 7.

5. *How often the collection is required:* On occasion; for each separate export, import, amendment, or renewal license application, and for exports of incidental radioactive material using existing general licenses.

6. *Who will be required or asked to report:* Any person in the U.S. who wishes to export or import (a) Nuclear material and equipment or byproduct material subject to the requirements of a specific license; (b) amend a license; (c) renew a license, and (d) for notification of incidental radioactive material exports that are contaminants of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

7. *An estimate of the number of annual responses:* 170.

8. *The estimated number of annual respondents:* 170.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 484.

10. *Abstract:* Persons in the U.S. wishing to export or import nuclear material or equipment, or byproduct material requiring a specific authorization, amend or renew a license, or wishing to use existing NRC general licenses for the export of incidental radioactive material over 100 kilograms must file an NRC Form 7 application. The NRC Form 7 application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue an export, import, amendment or renewal license.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One

White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 3, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. NRC Desk Officer, Office of Information and Regulatory Affairs (3150-0027), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Gregory Trussell, (301) 415-6445.

Dated at Rockville, Maryland, this 23rd day of April 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9-10139 Filed 5-1-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7015; NRC-2009-0187]

Notice of Intent and Opportunity to Provide Written Comments AREVA Enrichment Services LLC Eagle Rock Enrichment, Idaho Falls, ID

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: AREVA Enrichment Services (AES) LLC submitted the original license application on December 30, 2008, that proposes the construction, operation and decommissioning of a gas centrifuge uranium enrichment facility to be located near Idaho Falls, Idaho. On April 24, 2009, AREVA resubmitted the application to request an enrichment capacity increase. The U.S. Nuclear Regulatory Commission (NRC), in accordance with the National Environmental Policy Act (NEPA) and 10 CFR Part 51, announces its intent to prepare an Environmental Impact Statement (EIS) evaluating this proposed action. The EIS will examine the potential environmental impacts of the proposed facility.

DATES: NRC invites public comments on the appropriate scope of issues to be considered in the EIS. The public

scoping process begins with publication of this NOI. Written comments submitted by mail should be postmarked by no later than June 19, 2009, to ensure consideration.

Comments mailed after that date will be considered to the extent practical. The NRC will conduct a public scoping meeting in Idaho Falls to assist in defining the appropriate scope of the EIS, and to help identify the significant environmental issues that need to be addressed in detail. The meeting date, times and location are listed below:

- *Meeting date:* June 4, 2009.
- *Meeting location:* Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402.
- *Scoping meeting time:* 6:30 p.m. to 9:30 p.m.

ADDRESSES: Members of the public are invited and encouraged to submit written comments regarding the appropriate scope and content of the EIS. Comments may be sent to the Chief, Rules and Directives Branch, Mail Stop TWB-05-B01, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Please note Docket No. 70-7015 when submitting comments. Also comments may be sent electronically to EagleRock.EIS@nrc.gov.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the license review of the AES application, please contact Breeda Reilly at (301) 492-3110. For general information on the NRC NEPA or the environmental review process related to the AES application, please contact Gloria Kulesa at (301) 415-5308.

Information and documents associated with the AES project, including the license application (submitted on December 30, 2008), are available for public review through our electronic reading room: <http://www.nrc.gov/reading-rm/adams.html> and on the NRC's AREVA Eagle Rock Enrichment Facility Web page: <http://www.nrc.gov/materials/fuel-cycle-fac/arevanc.html>. Documents may also be obtained from NRC's Public Document Room at the U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

AES submitted a license application and an Environmental Report for a gas centrifuge uranium enrichment facility to the NRC on December 30, 2008. The NRC will evaluate the potential environmental impacts associated with the proposed enrichment facility in parallel with the review of the license

application. This environmental evaluation will be documented in draft and final EISs in accordance with NEPA and NRC's implementing regulations contained in 10 CFR part 51.

If NRC later finds AES' complete license application to be acceptable for review, a Notice of Hearing and Opportunity to Petition for Leave to Intervene will be published in a future **Federal Register** notice. The purpose of the present notice is to inform the public that the NRC staff will prepare an EIS as part of the review of the application, and to encourage the public to participate in the environmental scoping process as defined in 10 CFR 51.29.

2.0 AREVA Eagle Rock Enrichment Facility

The facility, if licensed, would enrich uranium for use in manufacturing commercial nuclear fuel for use in power reactors. Feed material would be natural (not enriched) uranium in the form of uranium hexafluoride (UF₆) which contains the uranium-235 isotope. AES proposes to use centrifuge technology to enrich this isotope in the UF₆ to up to 5 percent by weight. The centrifuge would operate at below atmospheric pressure. The capacity of the plant would be up to 6.6 million separative work units (SWU) (SWU relates to a measure of the work used to enrich uranium). The enriched UF₆ would be transported to a fuel fabrication facility. The depleted UF₆ would be stored on site until it is sold, disposed of commercially, or taken by the Department of Energy.

3.0 Alternatives to be Evaluated

No-Action—The no-action alternative would be to not build the proposed gas centrifuge uranium enrichment facility. Under this alternative, the NRC would not approve the license application. This serves as a baseline for comparison.

Proposed Action—The proposed action involves the construction, operation, and decommissioning of a gas centrifuge uranium enrichment facility located near Idaho Falls, Idaho. The applicant would be issued an NRC license under the provisions of 10 CFR Parts 30, 40, and 70. Other alternatives not listed here may be identified through the scoping process.

4.0 Environmental Impact Areas to be Analyzed

The following areas have been tentatively identified for analysis in the EIS:

- *Land Use:* Plans, policies and controls;

- *Transportation*: Transportation modes, routes, quantities, and risk estimates;
- *Geology and Soils*: Physical geography, topography, geology and soil characteristics;
- *Water Resources*: Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- *Ecology*: Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- *Air Quality*: Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- *Noise*: Ambient, sources, and sensitive receptors;
- *Historical and Cultural Resources*: Historical, archaeological, and traditional cultural resources;
- *Visual and Scenic Resources*: Landscape characteristics, manmade features and view shed;
- *Socioeconomics*: Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;
- *Environmental Justice*: Potential disproportionately high and adverse impacts to minority and low-income populations;
- *Public and Occupational Health*: Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
- *Waste Management*: Types of wastes expected to be generated, handled, and stored; and
- *Cumulative Effects*: Impacts from past, present and reasonably foreseeable actions at, and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to, or deletions from this list may occur as a result of the public scoping process.

5.0 Scoping Meeting

One purpose of this notice is to solicit public comments on the proposed scope and content of the EIS. The NRC will hold a public scoping meeting in Idaho Falls, Idaho, to solicit both oral and written comments from interested parties. Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS and to identify significant issues related to the proposed action. It is intended to solicit input from the public and other

agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

- Ensure that concerns are identified early and are properly studied;
- Identify alternatives that will be examined;
- Identify significant issues that need to be analyzed;
- Eliminate unimportant issues from detailed consideration; and
- Identify public concerns.

On June 4, 2009, the NRC will hold a public scoping meeting in Idaho Falls to solicit both oral and written comments from interested parties. The meeting will be transcribed to record public comments. The meeting will begin with NRC staff providing a description of the NRC's role and mission. A brief overview of the licensing process will be followed by a brief description of the environmental review process. Most of the meeting time will be allotted for attendees to make oral comments.

In addition, the NRC staff will host informal discussions for one hour prior to the start of the public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below.

Persons may register to attend or present oral comments at the scoping meeting by contacting Tarsha Moon at (301) 415-7843, or by sending e-mail to Tarsha.Moon@nrc.gov no later than May 28, 2009. Members of the public may also register to speak at the meeting prior to the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. If special equipment or accommodations are needed to attend or present information at the public meeting, please contact Tarsha Moon no later than May 21, 2009, so that the NRC staff can determine whether the request can be accommodated.

6.0 Scoping Comments

Members of the public may provide comments orally at the transcribed public scoping meeting or in writing. Written comments may be sent by e-mail to EagleRock.EIS@nrc.gov or mailed to the address listed above in the ADDRESSES Section.

At the conclusion of the scoping process, the NRC staff will prepare a summary of public comments regarding

the scope of the environmental review and significant issues identified. NRC staff will send this summary to each participant in the scoping process for whom the staff has an address. This summary and project-related material will be available for public review through our electronic reading room: <http://www.nrc.gov/reading-rm/adams.html>. The scoping meeting summaries and project-related materials will also be available on the NRC's AREVA Eagle Rock Enrichment Facility Web page: <http://www.nrc.gov/materials/fuel-cycle-fac/arevanc.html>.

7.0 The NEPA Process

The EIS for the AES facility will be prepared pursuant to the National Environmental Policy Act of 1969 and the NRC's NEPA Regulations at 10 CFR Part 51. After the scoping process is complete, the NRC and its contractor will prepare and publish a draft EIS. A 45-day comment period on the draft EIS is planned, and public meetings to receive comments will be held approximately three weeks after publication of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register**, on NRC's AREVA Eagle Rock Enrichment Facility Web page, and in the local news media. The final EIS will include responses to any comments received on the draft EIS.

Dated at Rockville, Maryland, this 27th day of April 2009.

For The Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management, and Environmental Protection, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. E9-10141 Filed 5-1-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0171]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: This document corrects a notice appearing in the **Federal Register** on April 20, 2009 (74 FR 18000), concerning the issuance of Regulatory Guide 1.211 and the withdrawal of Regulatory Guide 1.131. This action is necessary to correct an Agencywide

Documents Access and Management System accession number.

FOR FURTHER INFORMATION CONTACT:

Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 251-7495 or e-mail to Mark.Orr@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 18000, in the third column, in the first complete paragraph, the accession number is changed from "ML081690227," to read "ML082530230."

Dated at Rockville, Maryland, this 28th day of April 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9-10136 Filed 5-1-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0189]

Interim Staff Guidance on Assessing the Consequences of an Accidental Release of Radioactive Materials From Liquid Waste Tanks

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on its Proposed Interim Staff Guidance (ISG) DC/COL-ISG-013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090830488). The purpose of this ISG is to modify and provide Combined License (COL) and Design Certification (DC) applicants additional clarity and guidance for the application of Standard Review Plan (SRP) Sections 11.2 and 2.4.13 on the characterization of hydro geological properties of a site associated with the effects of accidental releases of radioactive liquid on existing or likely future uses of ground and surface water resources in meeting the requirements of Title 10 of the Code of Federal Regulations, Part 100 (10 CFR 100.10 or 100.20) and Appendix B to 10 CFR Part 20 on effluent concentration limits. This ISG would revise the staff guidance previously issued in March 2007 in the SRP NUREG-0080, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,"

Sections 11.2 and 2.4.13. These two SRP sections are not internally consistent in identifying acceptable criteria for assessing the consequences of accidental releases of radioactive materials, or in providing guidance to the staff and applicants to establish conditions for such releases and define acceptable assumptions to describe exposure scenarios and pathways to members of the public. The NRC staff issues DC/COL-ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for DCs and COLs by the Office of New Reactors. The NRC staff will also incorporate the approved DC/COL-ISG-013 into the next revision of the SRP and related guidance documents.

DATES: Comments must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted to: Chief, Rulemaking and Directives Branch, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of the **Federal Register** notice.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by e-mail at PDR.Resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Frye, Chief, Health Physics Branch, Division of Construction Inspection and Operational Programs, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-3900 or e-mail at timothy.frye@nrc.gov.

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency's external Web page (<http://www.nrc.gov/reading-rm/doc-collections/isg/>).

The NRC staff is issuing this notice to solicit public comments on proposed DC/COL-ISG-013. After the NRC staff considers any public comments, it will

make a determination regarding proposed DC/COL-ISG-013.

Dated at Rockville, Maryland, this 24th day of April 2009.

For the Nuclear Regulatory Commission.

William F. Burton,

Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9-10137 Filed 5-1-09; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009-24 and CP2009-28 Order No. 207]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due May 5, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 21, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List.¹ The Postal Service asserts that the Governors have established a price and classification "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-24.

The Postal Service contemporaneously filed an agreement related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The agreement has been assigned Docket No. CP2009-28.

Request. The Request incorporates (1) A statement of supporting justification

¹ Request of the United States Postal Service to Add Royal Mail Inbound Air Parcel Post Agreement to the Competitive Products List and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, April 21, 2009 (Request).

as required by 39 CFR 3020.32; (2) Governors' Decision No. 09–5 authorizing the new product which includes a certification of the vote, requested changes in the Mail Classification Schedule (MCS) product list, an analysis of the agreement and a certification of compliance with 39 U.S.C. 3633(a); (3) a redacted version of the agreement; and (4) an additional certification of compliance with 39 U.S.C. 3633(a).² Substantively, the Request seeks to add the Royal Mail Inbound Air Parcel Post Agreement to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Giselle Valera, Executive Director, Global Finance and Business Analysis, asserts that the service to be provided under the agreement will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment 1. Thus, Ms. Valera contends there will be no issue of subsidization of competitive products by market dominant products as a result of this agreement. *Id.*

Related contract. A redacted version of the bilateral Royal Mail Inbound Air Parcel Post agreement is included with the Request. The Postal Service represents that the agreement is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.*, Attachment 2 and Attachment 3. The agreement implements negotiated rates for Inbound Air Parcel Post from the United Kingdom. It becomes effective after the Postal Service notifies Royal Mail that it has received all required reviews and the Commission has provided all necessary regulatory approvals. The Postal Service states that the agreement is to remain in effect until terminated by the parties.

² Attachment 1 to the Request consists of the Statement of Supporting Justification. Attachment 2 is the Decision of the Governors of the United States Postal Service on Establishment of Prices and Classifications for Royal Mail Group Inbound Air Parcel Post Agreement (Governors' Decision No. 09–5). The Governors' Decision includes Attachment A, requested changes in the MCS product list; Attachment B, a redacted version of Management Analysis of Royal Mail Group Inbound Air Parcel Post Agreement; and Attachment C, a redacted version of Certification of Prices for the Royal Mail Group Inbound Air Parcel Post Agreement. Attachment 3 is a redacted version of the contract. Attachment 4 is an additional redacted certification of compliance with 39 U.S.C. 3633 (a) for the agreement. The Postal Service states that the additional certification "was effected to account for changes in the estimated amount of inward land rate payments in 2010 due to revisions to the payment structure under the [Universal Postal Union's] Parcel Post Regulations that will become effective on January 1, 2010." *Id.* at 2, n.3.

Currently, the Postal Service and Royal Mail apply the inward land rates for Air Parcel Post established by the Universal Postal Union's Postal Operations Council.³ In the Postal Service's original proposed MCS language for Inbound Air Parcel Post, bilateral agreements were included as a price category within the Inbound Air Parcel Post product.⁴ The Postal Service states it is proposing that the Royal Mail agreement be classified as a separate product as a practical matter and in conformity with the intent of the Commission's ruling in Order No. 43⁵ which contemplates that each agreement or group of functionally equivalent agreements may be considered as one product. *Id.* at 4.

The Postal Service filed much of the supporting materials, including the analysis of the agreement, Governors' Decision, and the specific Royal Mail Inbound Air Parcel Post agreement in redacted versions and under seal. In its Request, the Postal Service maintains that the agreement and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–24 and CP2009–28 for consideration of the Request pertaining to the proposed Royal Mail Inbound Air Parcel Post product and the related bilateral contractual agreement as a competitive product, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than May 5, 2009. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

³ *See* Universal Postal Union International Bureau Circular No. 241, "Parcel Post-Inward Land Rates Applicable from 1 January 2009," September 29, 2008.

⁴ *See* United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007.

⁵ *See* PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. MC 2007–1, October 29, 2007, at paras. 2177, 2198.

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–24 and CP2009–28 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than May 5, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–10095 Filed 5–1–09; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financials which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Invivodata, Inc., 2100 Wharton Street, Suite 505, Pittsburgh, PA 15203.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, L.P., both Associates of Horizon Ventures Fund II, L.P., own in the aggregate more than ten percent of Invivodata, Inc. Therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Administrator

for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: April 13, 2009.

Harry E. Haskins,

Acting Administrator for Investment.

[FR Doc. E9-10143 Filed 5-1-09; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59826; File No. SR-NYSEArca-2009-22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of the Grail American Beacon Large Cap Value ETF

April 28, 2009.

On March 13, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the Grail American Beacon Large Cap Value ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on April 6, 2009.³ The Commission received no comments on the proposal. This order grants approval to the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares.⁴ The Shares will be offered by Grail Advisors ETF Trust ("Trust"),⁵ a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The Exchange states that the Shares will

conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A-3 under the Act,⁶ as provided by NYSE Arca Equities Rule 5.3.

Grail Advisors, LLC ("Manager"), a majority owned subsidiary of Grail Partners, LLC, is the Fund's investment manager, and American Beacon Advisors, Inc. ("ABA") is the Fund's sub-adviser.⁷ The Fund's investment objective is long-term capital appreciation and current income. It seeks to achieve its investment objective by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of large market capitalization U.S. companies. These companies will generally have market capitalizations similar to the market capitalizations of the companies in the Russell 1000® Index at the time of investment. The Russell 1000® Index measures the performance of the 1,000 largest U.S. companies based on total market capitalization. The Fund's investments may include common stocks, preferred stocks, securities convertible into U.S. common stocks, U.S. dollar-denominated American Depositary Receipts, and U.S. dollar-denominated foreign stocks traded on U.S. exchanges. The Fund will not purchase or sell securities in markets outside the United States.

Additional information regarding the Fund, the Shares, the Fund's investment objective, strategies, policies, and restrictions, risks, fees and expenses, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.

⁶ 17 CFR 240.10A-3.

⁷ The Exchange states that Grail Advisors, LLC is affiliated with Grail Securities, LLC, a broker-dealer. As required by Commentary .07 to NYSE Arca Equities Rule 8.600, the Exchange represents that the Manager has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning composition and/or changes to the Fund's portfolio. Commentary .07 to NYSE Arca Equities Rule 8.600 also requires personnel, who make decisions on the open-end fund's portfolio composition, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. In addition, the Exchange represents that ABA, the Fund's primary sub-adviser, is not affiliated with a broker-dealer and that any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session. In addition, the Fund will make available on its Web site on each business day the Disclosed Portfolio that will form the basis for its calculation of the net asset value ("NAV"), which will be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4 p.m. Eastern Time) on each business day. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to trading volume, prices, and NAV. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair

⁸ 15 U.S.C. 78f.

⁹ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59651 (March 30, 2009), 74 FR 15548 ("Notice").

⁴ See NYSE Arca Equities Rule 8.600.

⁵ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act"). On January 14, 2009, the Trust filed with the Commission pre-effective amendment 1 to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-148082 and 811-22154) ("Registration Statement").

disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹¹ The Exchange represents that the Manager has implemented a “fire wall” between it and its broker-dealer affiliate with respect to access to information concerning the composition and/or changes to the Fund’s portfolio.¹² Finally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.¹³

The Exchange has represented that the Shares are equity securities subject to the Exchange’s rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange’s surveillance procedures are adequate to properly monitor Exchange trading of the Shares

in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A-3 under the Act.¹⁴

(5) The Fund will not purchase or sell securities in markets outside the United States.

This approval order is based on the Exchange’s representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁶ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Fund.¹⁷ The

Commission also notes that it has received no comments regarding the proposed rule change. The Commission finds that the proposed rule change does not raise any novel regulatory issues and believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEArca-2009-22) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-10116 Filed 5-1-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59821; File No. SR-DTC-2009-05]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Expanding the Scope and Timing To Collect and Pass-Through Fees Owed by Participants to American Depositary Receipt Agents

April 24, 2009.

I. Introduction

On February 25, 2009, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ On March 16, 2009, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.² The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

Prior to this rule change, DTC collected custody fees, called Depository Service Fees (“DSF”), from

¹¹ Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

¹² The Exchange also represents that ABA, the Fund’s primary sub-adviser, is not affiliated with a broker-dealer, and that any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

¹³ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

¹⁴ See *supra* note 6.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See, e.g., Securities Exchange Act Release Nos. 58512 (September 11, 2008), 73 FR 53915 (September 17, 2008) (SR-NYSEArca-2008-85) (approving the listing and trading of shares of the PowerShares Active U.S. Real Estate Fund); and 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (approving the listing and trading of shares of the PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, and PowerShares Active Mega-Cap Portfolio, among other funds).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 59540 (Mar. 9, 2009), 74 FR 11146.

participants once a year per CUSIP. DTC collected DSFs at the request of the depository bank and only for issues that have not paid a dividend in the last 12 months. In addition to collecting the DSF, DTC charged its participants three percent (3%) of the ADR agent fee, which includes all fees under the ADR agreement, up to a maximum of \$10,000 per CUSIP ("collection charge") in order to cover costs incurred in collecting and passing through DSFs.³

With this rule filing, DTC will collect all allowable DSFs, dividend fees,⁴ pass-through expenses, or other special fees as governed by the ADR agreement.⁵ Additionally, DTC will increase the maximum collection charge to \$20,000 per CUSIP. In order to collect the ADR agent fees, the ADR depository banks will be required to notify DTC thirty calendar days prior to the record date that a DSF or other fee is due and payable.⁶ Moreover, DTC will require that the ADR depository bank submit an attestation that the specific fee(s) is (are) allowable under the ADR agreement with the issuer. The attestation will be in a form prescribed by DTC and may be changed periodically to address operational issues. If a participant asks DTC to substantiate the fee, DTC may require the ADR depository to provide DTC with a copy of the ADR agreement with the issuer and highlight the fee schedule. DTC may at its discretion provide copies of the agreement to its participants to substantiate the fee.

As a result of this rule filing, the fee schedule for assessing ADR agent fees will be revised. First, ADR agent fees will apply to all fees permitted under the ADR agreement; the reference to "issues not paying periodic dividends" would be deleted. Second, as discussed above, the maximum ADR agent fee that DTC would collect would be increased to \$20,000 from \$10,000.

DTC expects to begin collecting ADR agent fees as expanded by this rule filing in the first full month following the approval of this filing.

³ See Securities Exchange Release Act No. 55306 (Feb. 15, 2007) 72 FR 8217 (Feb. 23, 2007) (File No. SR-DTC-2006-21) (modifying the fees from the original filing).

⁴ Dividend fees will continue to be collected through the current rate adjustment process. The dividend fee is incorporated into the final rate paid on the dividend by the agent on payment date and covers their cost for servicing the dividend payment.

⁵ ADR agreements are filed with the Commission and are usually posted on the depository bank's Web site.

⁶ Fees may be collected multiple times in any given calendar year depending on the terms of the ADR agreement.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,⁷ which requires that the rules of a registered clearing agency are designed to, among other things, remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. For example, further automating and centralizing information to effect DTC's ADR agent fee collection process should eliminate invoice and check processing for DTC participants and depository banks because ADR depositories will no longer have to mail invoices and reminders to participants holding ADR securities at DTC. In addition, DTC participants will have a more transparent view into upcoming ADR agent fees and a centralized source for information about the ADR agent fee and the collection process. These refinements to the ADR fee collection process should therefore remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act⁸ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-DTC-2009-05) be and hereby is approved.¹⁰

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-10117 Filed 5-1-09; 8:45 am]

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⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59822; File No. SR-NASDAQ-2009-034]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Rule 7050 Governing Pricing for The NASDAQ Options Market ("NOM")

April 27, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on April 9, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ [sic] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge applicable only to members, which renders the proposed rule change effective upon filing. The Commission is publishing this notice and [sic] order to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed a proposed rule change to modify Rule 7050 governing pricing for Nasdaq members using the NASDAQ Options Market ("NOM"), Nasdaq's facility for executing and routing standardized equity and index options. Proposed new language is underlined [sic]; proposed deletions are in brackets.⁵

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

Except as specified below, the charge to member entering order that executes in the NASDAQ Options Market.	\$0.45 per executed contract.
For a pilot period ending July 31, 2009, charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market.	\$0.45 per executed contract.
Charge to members entering orders in options on QQQQ, SPY, DIA, IWM, AAPL BAC, C, GS, JPM, RIMM, XLE, XLF, and XOM with an account type "Customer" that executes and remove liquidity entered by another member.	No fee.
Credit to member providing liquidity through the NASDAQ Options Market	\$0.30 per executed contract.
Credit to member providing liquidity using price-improving orders through the NASDAQ Options Market	\$0.35 per executed contract.

FEES AND REBATES

[Per executed contract]

	Customer	Firm	Market maker
Penny Pilot Options:			
Rebate to Add Liquidity	\$0.25	\$0.25	\$0.25
Fee for Removing Liquidity	Free	0.45	0.45
All Other Options:			
Fee for Adding Liquidity	Free	0.30	0.30
Fee for Removing Liquidity .....	.....	0.45	0.45
Rebate for Removing Liquidity	0.20	.....	.....

Transactions in which the same participant is the buyer and the seller shall be charged a net fee of \$0.10 per executed contract.

For a pilot period ending July 31, 2009, the charge for members or non-members entering order via the Options Intermarket Linkage that executes in the Nasdaq Options Market shall be \$0.45 per executed contract.

(2)–(4) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below [sic], and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is modifying NASDAQ Rule 7050, the fee schedule for NOM, in several ways. *First*, Nasdaq is making several changes that apply to orders with an account type of "Customer." Specifically, Nasdaq is expanding a pricing program to lower the fee for the execution of options contracts for certain orders in certain options on the NASDAQ Options Market ("NOM"). On January 12, 2009, Nasdaq began permitting orders with an account type of "Customer" to take liquidity⁶ for free in certain options. Nasdaq applied the new fee provision to options on four

exchange-traded funds: QQQQ, SPY, DIA, and IWM. Nasdaq later expanded that program to apply the reduced fee provision to options on the following equities: AAPL, BAC, C, GS, JPM, RIMM, XLE, XLF, and XOM. That proposal accomplished its goal of attracting liquidity to the Nasdaq Options Market.

Accordingly, Nasdaq now proposes to expand the application of that rule to additional options classes. Specifically, Nasdaq is expanding the program to all options that are included in the Options Penny Pilot Program. Nasdaq will monitor the trading of options on these equities to ensure that the proposal is operating in a fashion that promotes the interests of investors.

Nasdaq is also changing the fee structure for "Customer" orders in options not included in the Options Penny Pilot Program. Specifically, Nasdaq will charge no execution fees for members providing liquidity through the NASDAQ Options Market with an account type "Customer." Nasdaq will also offer a credit of \$0.20 per executed contract to members entering orders in options with an account type "Customer" that execute and remove liquidity entered by another member in options that are not included in the Options Penny Pilot Program.

Second, Nasdaq is modifying NASDAQ Rule 7050 to further distinguish between options that are included in the Options Penny Pilot Program and those that are not. Specifically, NOM will provide a credit

of \$0.25 to members providing liquidity through NOM in options included in the Options Penny Pilot Program. [sic], and charge a fee of \$0.30 to members providing liquidity in the capacity of "firm" or "market maker" (as opposed to "customer") through NOM for options that are not included in Options Penny Pilot Program.

Third, Nasdaq is modifying NASDAQ Rule 7050 with respect to all options to change the distinction between orders that interact with other members' orders and those that interact with orders from the same firm. Specifically, Nasdaq will charge a fee of \$0.10 per executed contract when a member order executes against the order entered by the same firm. Similarly, Nasdaq will not offer a credit or charge a fee when a member order provides liquidity to an order entered by the same firm.

Fourth, Nasdaq is eliminating the special pricing currently offered for Price Improving Orders. Going forward, Price Improving Orders will be subject to the standard fee schedule set forth in NASDAQ Rule 7050 as amended by this proposed rule change.

Nasdaq believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all similarly situated members and customers. As with all fees, Nasdaq may adjust these proposed fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

⁶ An order that takes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(5) of the Act,⁸ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. As one of seven options market in the national market system, Nasdaq's fees must be competitive and low in order for Nasdaq to attract order flow, execute orders, and grow as a market. Nasdaq believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, Nasdaq has designed its fees to compete effectively for the execution of options contracts and to reduce the overall cost to investors of options trading.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge applicable only to members, which renders the proposed rule change effective upon filing. Nasdaq will make the proposed pricing schedule operational on April 13, 2009.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-2009-034 and should be submitted on or before May 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-10118 Filed 5-1-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59823; File No. SR-NYSE-2009-40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending the Exchange's Timely Alert Policy

April 27, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 8, 2009, New York Stock Exchange, LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 202.06 of the Listed Company Manual to provide that companies can comply with the Exchange's immediate release policy by disseminating the information by any Regulation Fair Disclosure ("Regulation FD") compliant method (or combination of methods). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 202.05 of the Listed Company Manual requires a listed company to release quickly to the public any news or information which might reasonably be expected to materially effect the market for its securities (the "immediate release policy"). Section 202.06 provides that companies should comply with the immediate release policy by issuing a press release.

Regulation FD was adopted by the SEC in 2000 in order to curb the selective disclosure of material non-public information by issuers to analysts and institutional investors.³ Generally, Regulation FD requires that when an issuer discloses material information, it do so publicly. Public disclosure under Regulation FD can be accomplished by filing a Form 8-K with the SEC or through another method of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public. In addition to a broadly disseminated press release, Regulation FD compliant methods of disclosure may include furnishing to or filing with the SEC a Form 8-K as well as conference calls, press conferences and webcasts, so long as the public is provided adequate notice (generally by press release) and granted access.⁴

Since the adoption of Regulation FD, some non-NYSE listed companies have adopted the practice of issuing material disclosures in a Form 8-K rather than by way of a press release. It has been the Exchange's experience that some companies are confused as to their disclosure obligations under Exchange rules, with companies sometimes assuming that a disclosure in a Form 8-K is sufficient to comply with the Exchange's immediate release policy. Furthermore, some companies that do understand the Exchange's press release requirements have expressed the view that a press release is redundant when the company is filing a Form 8-K to meet its Regulation FD requirements. In addition, some companies wish to publicize material news through the

company website, as the SEC has provided recent guidance that this approach is appropriate under certain circumstances.⁵

The Exchange now proposes to amend Section 202.06 to provide that companies may comply with the immediate release policy by disseminating the information using any method (or combination of methods) that constitutes compliance with Regulation FD. Foreign private issuers are subject to the timely alert policy but they are not required to comply with Regulation FD. Notwithstanding their exemption from Regulation FD, Section 202.06 will allow foreign private issuers to comply with the timely alert policy by any method (or combination of methods) that would constitute compliance with Regulation FD for a domestic U.S. issuer. While the Exchange continues to believe that there are benefits to the market and investors generally if companies issue press releases when disclosing material information, the Exchange nonetheless believes that it is appropriate to harmonize its requirements in this regard with Regulation FD and Nasdaq rules thereby eliminating the confusion inherent in having different regimes applied by the two largest listing exchanges and the SEC.⁶ The Exchange believes that many companies will continue to issue press releases in relation to material news events, but also believes that it is appropriate to enable companies to utilize the flexibility and discretion with respect to the method of disclosure provided by Regulation FD.

Section 202.06(B) currently provides that, when the announcement of news of a material event or a statement dealing with a rumor which calls for immediate release is made shortly before the opening or during market hours (9:30 a.m. to 5 p.m., New York time⁷), it is recommended that the company's Exchange representative be notified by telephone at least ten minutes prior to release of the announcement. This timely notification enables the Exchange to consider whether, in the opinion of the Exchange, trading in the security should be temporarily halted.⁸ The Exchange

proposes to amend this text to make it clear that the notification to the Exchange of such announcements is a requirement of the rule and not just a recommendation. In addition, the Exchange proposes to amend Section 202.06(B) to require the listed company when contacting the Exchange to disclose to the Exchange the substance of the announcement, identify to the Exchange the Regulation FD-compliant method it intends to use to disseminate the news and provide the Exchange with the information necessary to locate the information upon publication. The rule is also amended to require the company, when the announcement is in written form, to provide the text of the proposed announcement to the Exchange by email at the time it notifies the Exchange.

The Exchange will continue to evaluate the materiality of these disclosures and implement temporary trading halts, where appropriate, to facilitate the orderly dissemination of certain issuer announcements having a potentially material impact on the price of the securities.

The Exchange is also proposing several other minor changes to Section 202.06. The Exchange is adding a parenthetical to Section 202.06(B), referring readers to Exchange Rule 123D(1) for the Exchange's policies with respect to delayed openings and trading halts. Additionally, Section 202.06(C) is being amended (i) to provide that public disclosures which may significantly affect trading should be provided to the Exchange by e-mail rather than by facsimile as is currently the case and (ii) to conform to the change to Section 202.06(B) by providing that material news may be disseminated by any Regulation FD compliant method and not just by press release.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,⁹ in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁰

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ The Commission notes that, in the purpose section of the Form 19b-4, the Exchange provided a more complete statutory basis for the proposed rule change, as follows: The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the

³ See Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) ("Regulation FD Adopting Release").

⁴ See Regulation FD Adopting Release at pages 51723-51724.

⁵ See Securities Exchange Act Release No. 58288 (August 1, 2008), 73 FR 45862 (August 7, 2008).

⁶ See Securities Exchange Act Release No. 46288 (July 31, 2002), 67 FR 51306 (August 7, 2002) (SR-NASD-2002-85) (the "Nasdaq Amendment").

⁷ While the NYSE's trading day ends officially at 4 p.m., New York time, there are crossing sessions until 5 p.m., New York time.

⁸ See NYSE Rule 123D(1) for the Exchange's procedures with respect to delayed openings and trading halts pending dissemination of material news.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

"Act"), in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that it harmonizes the Exchange's immediate release policies with the SEC's requirements in Regulation FD.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ The Commission notes that pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-40 and should be submitted on or before May 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-10119 Filed 5-1-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59824; File No. SR-CBOE-2009-018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Permanently Establish the Short Term Option Series Pilot Program

April 27, 2009.

On March 13, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to permanently establish its Short Term Option Series pilot program (the "Weeklys Program"). The proposed rule change was published for comment in the **Federal Register** on March 26, 2009.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

The Commission approved the Weeklys Program on a pilot basis on July 12, 2005.⁴ The proposed rule change permanently establishes the Weeklys Program. The proposal also consolidates the subsections of Rules 5.5 and 24.9 and make conforming, non-

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59601 (March 19, 2009), 74 FR 13281.

⁴ See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63) ("Weeklys Pilot Program Approval Order"). The Weeklys Program has since been extended and is currently scheduled to expire on July 12, 2009. See Securities Exchange Act Release Nos. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR-CBOE-2006-48), 56050 (July 11, 2007), 72 FR 39472 (July 18, 2007) (SR-CBOE-2007-76); and 58094 (July 3, 2008), 73 FR 40000 (July 11, 2008) (SR-CBOE-2008-70). See also Securities Exchange Act Release Nos. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (SR-CBOE-2006-49) (order approving an increase in the number of series that may be listed for a class selected to participate in the Weeklys Program from five to seven) and 58870 (October 28, 2008), 73 FR 65430 (November 3, 2008) (SR-CBOE-2008-110) (immediately effective rule change increasing the number of series that may be listed for a classes selected to participate in the Weeklys Program from seven series to 20 series).

substantive changes to the rule text related to the Exchange's Quarterly Option Series Pilot Program.

The Weeklys Program allows CBOE to list and trade Short Term Option Series, which expire one week after the date on which a series is opened. Under the Weeklys Program, CBOE may select up to five approved option classes on which Short Term Option Series could be opened. For each class selected for the Weeklys Program, the Exchange may open up to 20 Short Term Option Series for each expiration date in that class, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened. If the Exchange opens less than 20 Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the current value of the underlying security or index moves substantially from the previously listed exercise prices. In any event, the total number of series for a given expiration date will not exceed 20 series.

The Exchange has selected the following four options classes to participate in the Weeklys Program: S&P 500 Index options (SPX); S&P 100 Index American-style options (OEX); Mini-S&P 500 Index options (XSP); and S&P 100 Index European-style options (XEO).

In support of its proposal seeking permanent approval of the Weeklys Program, and as required by the Weeklys Pilot Program Approval Order, the Exchange submitted to the Commission a report on the Weeklys Program (the "Report") detailing the Exchange's experience with the Weeklys Program. In addition to the Report, the Exchange represented that it has not experienced any capacity-related problems with respect to Short Term Option Series, and also that it has the necessary system capacity to continue to support the option series listed under the Weeklys Program.

After careful review, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,⁵ and, in particular, the requirements of Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a

national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission finds that the Weeklys Program, as evidenced by the Report, has furthered the public interest by offering investors an alternative means of managing their risk exposures and carrying out their investment objectives. The Commission notes CBOE's representation that there is sufficient investor interest and demand in the Weeklys Program to warrant its permanent approval. The Commission further notes CBOE's representations that it has not experienced any capacity-related problems with respect to Short Term Option Series, and that the Exchange has the necessary system capacity to continue to support the option series listed under the Weeklys Program. Accordingly, the Commission finds that the proposed Weeklys Program strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid the unnecessary proliferation of option series that could compromise systems capacity. The Commission expects CBOE to continue to monitor the trading and quotation volume associated with the Weeklys Program, and the effect the Weeklys Program has on the capacity of the Exchange's, OPRA's, and vendors' systems.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-2009-018) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-10120 Filed 5-1-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59836; File No. SR-FINRA-2009-011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Panel Composition Rules of the Code of Arbitration Procedure for Industry Disputes

April 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") on March 4, 2009 the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On April 7, 2009, FINRA filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B,

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supersedes the initial filing in its entirety.

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 13402(a) of the Industry Code requires an all non-public panel for disputes between members, and for employment disputes between or among members and associated persons that relate exclusively to employment contracts, promissory notes, or receipt of commissions.⁴ In all other disputes between or among members and associated persons, Rule 13402(b) requires a majority public panel, where one arbitrator would be a non-public arbitrator and two would be public arbitrators.⁵

FINRA is proposing to amend the Industry Code to change the criteria for determining panel composition when the claim involves an associated person in industry disputes.⁶ Specifically, FINRA is proposing to amend Rule 13402 and related rules of the Industry Code to:

- Require that the parties receive a majority public panel for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims which require a specialized all public panel);⁷
- Clarify that in disputes involving only members, parties will receive an all non-public panel; and
- Provide that if a party amends its pleadings to add an associated person to a previously all member case, parties will receive a majority public panel.

Thus, cases involving only members would have an all non-public panel; cases involving a member and an associated person (excluding cases involving a claim for statutory discrimination) would have a majority public panel; and cases involving an associated person with a statutory discrimination claim would have a

specialized all public panel.⁸ Moreover, if a member amends its pleadings to add an associated person, the case would receive a majority public panel, and the rules that apply to cases between associated persons and members would govern list selection and the administration of the arbitration proceeding.

Employment Disputes Involving Associated Persons

Currently, in employment disputes between or among members and associated persons, FINRA requires that the panel consist of all non-public arbitrators in cases that arise out of the employment or termination of employment of an associated person, and that relate exclusively to (1) Employment contracts, (2) promissory notes, or (3) receipt of commissions. However, if a party adds a claim that does not meet these criteria, the parties receive a majority public panel.

FINRA is concerned that parties may be manipulating the rules to secure what they hope will be a favorable panel, which, in many cases, they believe to be a majority public panel. For example, if a party files a claim in which the sole cause of action involves an issue of compensation, FINRA requires parties to select an all non-public panel. However, if a party adds a claim that falls outside of the three causes of action described in the preceding paragraph (e.g., adds a cause of action involving a tort), then the parties receive a majority public panel instead.

FINRA also finds Rule 13402(a) cumbersome to implement. Because the three causes of action under the rule are the only exceptions to the requirement for a majority public panel in employment cases, the parties will receive a majority public panel if there is any ambiguity concerning whether a claim falls outside of the three exceptions. The lack of an objective standard for determining panel composition, therefore, makes the rule difficult to apply and often requires Dispute Resolution staff ("staff") to interpret the parties' pleadings to determine the appropriate panel composition. Underscoring this concern, staff regularly receives inquiries from parties questioning whether their panel composition is proper under Rule 13402.

FINRA is proposing, therefore, to amend Rule 13402 of the Industry Code to clarify that for all employment disputes between or among members

and associated persons (except for statutory employment discrimination cases), the parties must select a majority public panel.⁹ Rule 13402(a) would be amended to delete the title of the rule, which contains the exceptions to the majority public panel requirement, and replace it with a concise description, which clarifies that Rule 13402(a) would apply to disputes involving only members. Rule 13402(b) would be amended to modify the title of the rule to clarify that for all industry disputes involving associated persons (excluding disputes involving statutory employment discrimination claims), the parties would receive a majority public panel. FINRA is also proposing to make similar title changes to Rules 13403(a) and 13403(b), which govern generating and sending lists to parties, and to Rules 13406(a) and 13406(b), which govern appointment of arbitrators and discretion to appoint arbitrators not on the list.

FINRA believes the proposed amendments would establish an objective standard for determining panel composition and ensure that panel composition is determined by the types of parties involved, and not by the types of claims filed (other than claims for employment discrimination).

Employment Disputes Involving Only Members

FINRA is proposing to amend Rule 13402(a) to clarify that, in disputes involving only members, the parties will receive an all non-public panel. FINRA notes that the proposed amendment to Rule 13402(a) is consistent with the current rule and its intent, which is that disputes involving only members should receive an all non-public panel. FINRA believes that simplifying the rule, by amending the title as described above, will make the rule easier to apply for staff and easier to understand for users of the forum.

Amendments to Pleadings That Add an Associated Person

Occasionally, in a case that began with an all non-public arbitrator panel, a party will amend its pleadings in such a way that a majority public panel would be required. For example, this might occur when a party added a tort claim to prior claims that fit within the three exceptions to the majority public

⁴ If the panel consists of one arbitrator, the arbitrator will be a non-public arbitrator selected from the non-public chairperson roster described in Rule 13400(c). See Rule 13402(a).

⁵ If the panel consists of one arbitrator, the arbitrator will be a public arbitrator selected from the chairperson roster described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"). See Rule 13402(b).

⁶ The proposed changes discussed in this rule filing will not apply to claims filed under the Customer Code.

⁷ The proposal would not apply to disputes involving a claim of statutory employment discrimination. See Rule 13802.

⁸ See Rule 13802(c) (panel composition rule for statutory employment discrimination claims).

⁹ The proposed change would be consistent with the rules and procedures of the former New York Stock Exchange ("NYSE") arbitration forum. In the NYSE arbitration forum, cases involving associated persons received a majority public panel because the rules classified associated persons as non-members, and non-members received a majority public panel. See NYSE Rule 607(a)(1).

panel requirement under Rule 13402(a). Under the proposed amendments, this change in panel composition would occur solely in disputes involving only members in which an associated person is later added. Thus, FINRA is proposing to add a provision to Rule 13402(a) to address amended pleadings that add an associated person as a party.

The proposed rule change would mean that if a member (in a dispute involving only members) amends a pleading to add a party who is an associated person, the parties will receive a majority public panel. If lists of potential arbitrators have not been sent to parties, the Neutral List Selection System (NLSS) would generate three lists as outlined in Rule 13403(b)(2) of the Industry Code. Specifically, FINRA would send a public chairperson list, a public arbitrator list, and a non-public arbitrator list. If the panel consists of one arbitrator,¹⁰ NLSS would generate a public chairperson list, and FINRA would send this list only to the parties.¹¹

If the lists have been sent to parties but are not yet due, FINRA would send two new lists to the parties: a public chairperson list and a public arbitrator list as outlined in Rule 13403(b)(2).¹² The parties would keep the non-public chairperson list provided to them as described in Rule 13403(a), and would select the non-public arbitrator from this list. The arbitrator selected from the public chairperson list would be the chairperson of the panel. If the panel consists of one arbitrator, FINRA would send only a new public chairperson list to the parties.¹³

If the ranked lists are due, then the parties may not amend a pleading to add a new party until a panel has been selected and the panel grants a motion to add the party.¹⁴ If the panel grants the motion to add an associated person, FINRA will retain the non-public chairperson from the panel, and remove

the remaining non-public arbitrators.¹⁵ The parties would select two public arbitrators from new lists that FINRA would send to them in the same manner as if the ranked lists are not yet due. The arbitrator selected from the public chairperson list would be the chairperson of the panel. If the panel consists of one arbitrator and the arbitrator grants a motion to add an associated person, the arbitrator would be replaced with a public chair-qualified arbitrator that the parties select from a new public chairperson list that NLSS would generate.¹⁶

FINRA believes that these procedures would be consistent with the intent of the proposal to require that a majority public panel be selected if a dispute involves associated persons, and would clarify that amending a pleading to add an associated person would require a change to the panel composition.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect the public interest by minimizing the parties' ability to manipulate the panel composition rules by filing certain types of claims in industry cases. Moreover, FINRA believes that the proposed rule change will protect the public interest by simplifying the criteria for panel composition in industry disputes, establishing an objective standard for determining panel composition, and ensuring that panel composition is determined by the types of parties involved, and not by the types of claims filed.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

¹⁵ Pursuant to Rule 13407(b), the newly added party may not strike the non-public arbitrator but may challenge the arbitrator for cause in accordance with Rule 13410.

¹⁶ See *supra* note 11.

¹⁷ 15 U.S.C. 78o-3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by FINRA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

¹⁰ In a dispute between members, if the panel consists of one arbitrator, the arbitrator will be selected from FINRA's non-public chairperson arbitrator roster. See Rule 13402(a).

¹¹ See Rule 13403(b)(1). FINRA has raised the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000. The rule became effective on March 30, 2009. See Securities Exchange Release No. 59340 (February 2, 2009), 74 FR 6335 (February 6, 2009) (File No. FINRA-2008-047); see also Regulatory Notice 09-13.

¹² Pursuant to Rule 13407(a), FINRA will send the list of non-public arbitrators to the new party, with employment history for the past 10 years and other background information for each arbitrator listed. The newly added party may rank and strike arbitrators in accordance with Rule 13404.

¹³ See *supra* note 11.

¹⁴ See Rule 13309(c) of the Industry Code.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-FINRA-2009-011 and should be submitted on or before May 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-10172 Filed 5-1-09; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0354]

Agency Information Collection Activities; Revision of a Currently Approved Information Collection Request: COMPASS Portal Customer Satisfaction Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The collection involves the assessment of Federal Motor Carrier Safety Administration's (FMCSA's) strategic decision to integrate its Information Technology (IT) with its business processes using portal technology to consolidate its systems and databases through the FMCSA COMPASS modernization initiative. The information to be collected will be used to assess the satisfaction of Federal, State, and industry customers with the FMCSA COMPASS Portal. On January 29, 2009, FMCSA published a **Federal Register** notice (at 74 FR 5207) allowing for a 60-day comment period on the revision of this ICR. No comments were received in response to the notice.

DATES: Please send your comments by June 3, 2009. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2008-0354. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Office of the Secretary, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Schlicht, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-4441; e-mail: adam.schlicht@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: COMPASS Portal Customer Satisfaction Assessment.

OMB Control Number: 2126-0042.

Type of Request: Revision of a currently-approved information collection request.

Respondents: Federal, State, and Industry customers/users.

Estimated Number of Respondents: 100,422.

Estimated Time per Response: Five (5) minutes.

Expiration Date: 08/31/2009.

Frequency of Response: 4 times per year.

Estimated Total Annual Burden: 33,474 hours [(5 minutes to complete survey × 4 times per year = 20 minutes/60 minutes × 140,000 annual industry respondents × .70 (70%) response rate = 32,667) + (5 minutes to complete survey × 4 times per year = 20 minutes/60 minutes × 2,691 State government users × .90 (90%) response rate) = 807 burden hours].

Background: Title II, section 207, of the E-Government Act of 2002 (Pub. L. 107-347, 116 Stat. 2899, 2916; December 17, 2002) requires Government agencies to improve the methods by which government information, including information on the Internet, is organized, preserved, and made accessible to the public. To meet this goal, FMCSA plans to provide

a survey on the FMCSA Portal, allowing all users to assess its functionality. This includes the capability for Federal, State, and Industry users to access the Agency's existing safety IT systems with a single set of credentials and have easy access to safety data about the companies that do business with FMCSA. The COMPASS program will also focus on improving the accuracy of data to help ensure information, such as carrier name and address, is valid and reliable.

FMCSA's legacy information systems are currently operational. However, having this many stand-alone systems has led to data quality concerns, a need for excessive IDs and passwords, and significant operational and maintenance costs. Integrating our information technologies with our business processes will, in turn, improve our operations considerably, particularly in terms of data quality, ease of use, and reduction of maintenance costs.

In early 2007, FMCSA's COMPASS program launched a series of releases of a new FMCSA Portal to its Federal, State and Industry customers. Over the coming years, more than 15 releases are planned. These releases will use portal technology to fuse and provide numerous services and functions via a single user interface and provide tailored services that seek to meet the needs of specific constituencies within our customer universe.

The FMCSA COMPASS Portal will entail considerable expenditure of Federal Government dollars over the years and will fundamentally impact the nature of the relationship between the Agency and its Federal, State, and Industry customers. Consequently, the Agency intends to conduct regular and ongoing assessments of customer satisfaction with COMPASS through Form MCSA-5845 entitled, "FMCSA Portal Customer Satisfaction Assessment." The primary purposes of the assessment are to:

- Determine the extent to which the FMCSA Portal functionality continues to meet the needs of Agency customers;
- Identify and prioritize additional modifications; and
- Determine the extent that the FMCSA Portal has impacted FMCSA's relationships with its main customer groups.

The assessment will address:

- Overall customer satisfaction;
- Customer satisfaction against specific items;
- Performance of systems integrator against agreed objectives;
- Desired adjustments and modifications to systems;

¹⁸ 17 CFR 200.30-3(a)(12).

- Demonstrated value of investment to FMCSA and DOT;
- Items about the FMCSA Portal that customers like best; and
- Customer ideas for making the FMCSA Portal better.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA's performance including its utility in fostering assessment of the Portal; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize and/or include your comments in the request for OMB's clearance of this information collection request.

Issued on April 24, 2009.

David Anewalt,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E9-10174 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA). DOT.

TIME AND DATE: May 14, 2009, from 12 noon until 3 p.m. Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827-4565 to receive the toll free number and pass code needed to participate in this meeting by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Plan Board of Directors at (505) 827-4565.

Dated: April 29, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9-10325 Filed 4-30-09; 4:15 pm]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2000-7918; FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2003-14504; FMCSA-2006-25246]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 4, 2009. Comments must be received on or before June 3, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2000-7918; FMCSA-2000-8398; FMCSA-2002-13411; FMCSA-2003-14504; FMCSA-2006-25246, using any of the following methods.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all

comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://DocketInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 19 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 19 applications for renewal on their merits and decided to extend each

exemption for a renewable two-year period. They are: William E. Beckley, Michael C. Boyne, Clifford D. Carpenter, Timothy H. DuBois, Alf M. Gronstedt, Dennis K. Harris, Donald E. Howell, Tommy T. Hudson, William D. Johnson, Phillip L. Mangan, Tommy R. Masterson, Clarence M. Miles, Steven M. Montalbo, Vincent Rubino, Randy G. Spilman, Wyatt W. Thayer, Jr., Thomas S. Thompson, Mikiel J. Wagner, Robert A. Wegner.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 19 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 68 FR 13360; 70 FR 25878; 72 FR 28093; 65 FR 78256; 66 FR 16311; 70 FR 14747; 72 FR 27624; 67 FR 76439; 68 FR 10298; 68 FR 19598; 68 FR 33570; 70 FR 180; 72 FR 9397). Each of these 19 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition,

a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 3, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 19 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: April 24, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9-10173 Filed 5-1-09; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: ACH Vendor/Miscellaneous Payment Enrollment Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the SF 3881 "ACH Vendor/Miscellaneous Payment Enrollment Form."

DATES: Written comments should be received on or before July 6, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, Records and Information Management Branch, Room 135, 3700 East West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Alex Urban, EFT Strategy Division, Room 419A, 401 14th Street, SW., Washington, DC 20227, (202) 874-6762.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: ACH Vendor/Miscellaneous Payment Enrollment Form.

OMB Number: 1510-0056.

Form Number: SF 3881.

Abstract: This form is used to collect payment data from vendors doing business with the Federal Government. The Treasury Department, Financial Management Service, will use the information to electronically transmit payment to vendors' financial institutions.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 70,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 17,500.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 21, 2009.

Rita Bratcher,

Assistant Commissioner, Payment Management.

[FR Doc. E9-10046 Filed 5-1-09; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: National Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570, 2008 Revision, published July 1, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

National Casualty Company (NAIC # 11991).

Business Address: One West Nationwide Blvd., DSPF-76, Columbus, OH 43215-2220. PHONE: (614) 249-1545.

Underwriting Limitation b/: \$10,656,000.

Surety Licenses c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.

Incorporated in: Wisconsin.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 ("Circular"), 2008 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at <http://www.fms.treas.gov/c570>.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 24, 2009.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E9-10047 Filed 5-1-09; 8:45 am]

BILLING CODE 4810-35-M



Federal Register

**Monday,
May 4, 2009**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

50 CFR Part 648

**Magnuson-Stevens Fishery Conservation
and Management Act Provisions; Fisheries
of the Northeastern United States; Final
Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648****[Docket No. 080410547–9274–02]****RIN 0648–AW70****Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Several sections of the regulations governing the fisheries of the northeastern United States contain minor inadvertent errors, omissions, and ambiguities. This rule revises the portions of the Northeast (NE) fishery regulations that relate to the Vessel Monitoring System (VMS) and prohibitions, standardizes the VMS vendor requirements, and adds prohibitions and other regulations to clarify existing policies and requirements.

DATES: Effective May 1, 2009, except for amendments 11 and 12 to § 648.14, amendment 18.c to § 648.82, amendment 19.c to § 648.85, and amendment 20.c to § 648.86, which are effective from May 1, 2009, through October 28, 2009.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Regional Administrator, Northeast Region, National Marine Fisheries Service, and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Moira C. Kelly, Fishery Policy Analyst, phone (978) 281–9218, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: This rule revises portions of the NE fishery regulations by reorganizing the VMS and prohibitions sections, standardizing the VMS vendor requirements, and adding prohibitions and other regulations that correct or clarify existing policies and requirements. The changes are enacted under the authority given to the Secretary of Commerce at section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to

promulgate regulations to fully carry out the requirements of the Act. A proposed rule for this action was published on January 15, 2009 (74 FR 2478). No comments were received. The changes are summarized below.

VMS-Related Modifications

This action standardizes the qualification requirements of VMS vendors and VMS units between the NMFS NE Region and the National VMS program. The Regional Administrator, NE Region, NMFS (RA), retains the authority to approve or disapprove a vendor or unit for use in the NE Region; however, the standards against which the vendors are judged will be the same as used by the National VMS program. This action ensures that the VMS vendors meet industry-accepted criteria while the NE Region's specific VMS needs are met.

For consistency across fishery management plans (FMPs), a measure implemented under the Surfclam and Ocean Quahog FMP requiring vessel owners to call the NMFS Office of Law Enforcement (OLE) to verify connectivity between a new or replacement VMS unit and OLE prior to the vessel sailing on its first trip using VMS is expanded to all vessel owners. This expansion allows OLE to ensure that the units are installed and registered correctly in all of the necessary systems. In addition, this action reorganizes the VMS regulations so that the requirements that apply to vessel owners/operators are separate and distinguishable from the requirements that apply to VMS vendors. Further, the VMS Demarcation Line is modified through the addition of a new coordinate intended to allow vessels from Monhegan Island, Isle au Haut, and Matinicus Isle, Maine, to more easily comply with the VMS requirements of the NE Multispecies FMP.

Prohibitions-Related Modifications

The prohibitions section (§ 648.14) is reorganized to assist industry in more easily understanding the rules and regulations, and serves to improve compliance with those requirements. This rule groups together the prohibitions relating to a specific FMP, titles the sections and subsections, and provides more guidance on where to find a specific prohibition. This action also adds prohibitions to clarify or correct existing requirements. The additional prohibitions, which relate to regulations that have already been reviewed and approved through appropriate rulemaking procedures, clarify that aiding and abetting actions

prohibited by the Magnuson-Stevens Act, or any other statute administered by NOAA, is prohibited; that observers are prohibited from providing false information; that miscoding of trips through the VMS by vessel owners/operators is not permissible; that transferring regulated species at sea, without authorization from the RA, or as otherwise permitted, is prohibited; and that any vessel possessing or retaining any species regulated by the NE Region must be under its own power.

Other Modifications

Several regulations pertaining to VMS were inadvertently deleted when two final rules affecting the same sections of the regulations became effective at about the same time in December 2007. The final rule implementing Surfclam/Ocean Quahog Framework Adjustment (FW) 1 inadvertently deleted sections of the VMS regulations that were modified or added under the NE Multispecies FW 42 correction rule. This rule reinstates those regulations. Other sections that are clarified relate to recordkeeping requirements and twine-top measurements of scallop dredges. The recordkeeping regulations (§ 648.7) are modified to specify some of the types of records vessel owners and dealers are required to retain, and to clarify that any person acting in the capacity of a Federally permitted dealer is subject to the same requirements as a Federally permitted dealer. Further, this rule clarifies, at § 648.51, how to measure twine-top in scallop dredges and assist industry members with complying with the minimum mesh size requirements of the Atlantic Sea Scallop FMP. Other minor adjustments to the regulations correct the references of the Regular B Days-At-Sea (DAS) Program by removing the word “pilot,” and make other corrections to cross-references.

A detailed description of the regulatory changes, including their justification, is provided in the proposed rule (January 15, 2009, 74 FR 2478) and is not repeated here. NMFS received no comments during the comment period on the proposed rule.

Changes From the Proposed Rule

Minor errors in the proposed rule are corrected, including renumbering incorrect sequences of prohibitions; one prohibition is modified, and one prohibition is added for clarity. The prohibition barring fishing, possessing, or landing regulated NE multispecies after using an entire DAS allocation is clarified by removing the words “in excess of a possession limit” after “landing.” This is to clarify that it is not legal to land any regulated NE

multispecies after fully using a DAS allocation. In addition, a prohibition is added to clarify the requirements of vessel owners with regard to the Scallop Observer Program, specifying that failure to comply with the notification, observer services procurement, and observer services payment requirements of the sea scallop observer program specified in § 648.11(g) is prohibited. The reorganization of this rule also affects portions of the prohibitions and NE multispecies regulations that were suspended under the NE multispecies interim rule (74 FR 17030, April 13, 2009). This rule revises several of the suspended sections (portions of § 648.14, as well as § 648.82(e)(2)(iii)(B) and (e)(3); § 648.85(a)(3)(ii)(A)(1); (b)(6)(i); (b)(6)(iv)(A) and (B); (b)(6)(v); (b)(7)(iv)(A); and § 648.86(b)(1)(ii)(B)), and rennumbers the prohibitions that were added under the interim rule. In order to preserve the intent of the interim action, it is necessary to reissue all of the regulations that are affected by both rules, re-suspend those sections that were suspended by the interim rule, and restate the end of effectiveness date for the temporary regulations. None of the interim rule regulations are modified by this final rule and no new sections have been suspended. All of the suspensions and the additional interim regulations will be effective through the end of the interim action, including any suspensions.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective immediately, thereby waiving the 30-day delayed effective date required by 5 U.S.C. 553(d) because it is unnecessary and contrary to the public interest. The rule is administrative in nature and merely reorganizes sections of the regulations and codifies existing policies and procedures for clarity. The reorganization of the Prohibitions and VMS sections of the regulations is not substantive and has no effect on the public. It is intended to improve the public's understanding of the regulations by presenting the regulations more clearly. Several prohibitions are added to support existing regulations that had been approved through standard rulemaking procedures. Other minor additions to the regulations are to make the recordkeeping requirements more specific, in order to assist permitted dealers in more effectively complying with the regulations, as well as specify the process by which twine-top is measured to assist vessel owners in

complying with minimum mesh size requirements. None of the additional regulations impose new requirements on the public and are intended to explain existing requirements more clearly.

Pursuant to section 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the FMPs of the NE Region, other provisions of the Magnuson-Stevens Act, and other applicable law.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This rule contains a non-substantive change to a previously approved collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA), which has been approved by OMB under control number 0648-0202. Public reporting burden for the requirement to confirm VMS connectivity with the NMFS OLE is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see ADDRESSES*) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 28, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, definitions for “MCSP,” “MTU,” and “Records” are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

MCSP means a Mobile Communications Service Provider, which is an operator of a mobile communications service used to provide wireless connectivity between mobile platforms and fixed platforms, and enables location transmission and two-way message exchange between the vessel and NMFS, when using a compatible MTU.

* * * * *

MTU means a Mobile Transmitting Unit, which is a transceiver or communications device, including antennae, dedicated message terminal and display, and an input device such as a keyboard installed on a fishing vessel participating in the VMS program.

* * * * *

Records, with respect to records required to be kept by § 648.7, means those that include, but are not limited to, any written, recorded, graphic, electronic, or digital material; as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weighout slips; preliminary, interim, and final tally sheets; tags; notes; logbooks; statements; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts.

* * * * *

■ 3. In § 648.4, paragraphs (a)(8)(ii) and (a)(9)(i)(N)(3)(i) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(8) * * *

(ii) *Party and charter vessels.* All party or charter boats must have been issued and carry on board a valid party or charter boat permit to fish for,

possess, or land Atlantic bluefish in or from the EEZ if carrying passengers for hire. Persons on board such vessels must observe the possession limits established pursuant to § 648.164 and the prohibitions on sale specified in § 648.14(q).

(9) * * *

(i) * * *

(N) * * *

(3) * * *

(i) A vessel denied a limited access monkfish Category G or H permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the letter authorizing temporary participation in the monkfish fishery shall become invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the denial letter. If the appeal is approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

* * * * *

■ 4. In § 648.7, paragraphs (a)(1) introductory text, (d), and (e) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) *Detailed report.* Federally permitted dealers, and any individual

acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

* * * * *

(d) *Inspection.* Upon the request of an authorized officer or an employee of NMFS designated by the Regional Administrator to make such inspections, all persons required to submit reports under this part must make immediately available for inspection copies of reports, and all records upon which those reports are or will be based, that are required to be submitted or kept under this part.

(e) *Record retention.* Any record, as defined at § 648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and be available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records and reports at their principal place of business. Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year, and must be retained for a total of 3 years after the date the fish were last possessed, landed, and sold.

* * * * *

■ 5. Section 648.9 is revised to read as follows:

§ 648.9 VMS vendor and unit requirements.

(a) *Approval.* The type approval requirements for VMS MTUs and MCSPs for the Northeast Region are those as published by the NMFS Office of Law Enforcement in the **Federal Register**, and are available upon request. Both the minimum national standards and any established regional standards must be met in order to receive approval for use in the Northeast Region. The Regional Administrator shall approve all MTUs and MCSPs operating in the Northeast Region.

(b) *Maintenance.* Once approved, VMS units must maintain the minimum standards for which they were approved in the type approval requirements. Any changes made to the original submission for approval of an MTU or MCSP by NMFS must follow the procedures outlined in the type approval requirements.

(c) *Notification.* A list of approved VMS vendors will be published on the Northeast Regional Office Web site and in each proposed and final rule for implementing or modifying VMS requirements for specific fisheries.

(d) *Revocations.* In the event that a VMS vendor is deleted from the list of approved vendors, vessel owners that purchased a VMS unit from that vendor to meet Northeast requirements will be considered authorized to use that unit for the remainder of the unit's service life.

■ 6. Section 648.10 is revised to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

(a) *VMS Demarcation Line.* The VMS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Administrator upon request):

VMS DEMARCATION LINE

Description	N. lat.	W. long.
1. Northern terminus point (Canada landmass)	45°03'	66°47'
2. A point east of West Quoddy Head Light	44°48.9'	66°56.1'
3. A point east of Little River Light	44°39.0'	67°10.5'
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6'	68°10.8'
5. Isle au Haut Light	44°03.9'	68°39.1'
6. A point south of Monhegan Island	43°43.3'	69°18.6'
7. Pemaquid Point Light	43°50.2'	69°30.4'
8. A point west of Halfway Rock	43°38.0'	70°05.0'
9. A point east of Cape Neddick Light	43°09.9'	70°34.5'
10. Merrimack River Entrance "MR" Whistle Buoy	42°48.6'	70°47.1'
11. Halibut Point Gong Buoy "1AHP"	42°42.0'	70°37.5'
12. Connecting reference point	42°40'	70°30'
13. Whistle Buoy "2" off Eastern Point	42°34.3'	70°39.8'
14. The Graves Light (Boston)	42°21.9'	70°52.2'
15. Minots Ledge Light	42°16.2'	70°45.6'

VMS DEMARCATION LINE—Continued

Description	N. lat.	W. long.
16. Farnham Rock Lighted Bell Buoy	42°05.6'	70°36.5'
17. Cape Cod Canal Bell Buoy "CC"	41°48.9'	70°27.7'
18. A point inside Cape Cod Bay	41°48.9'	70°05'
19. Race Point Lighted Bell Buoy "RP"	42°04.9'	70°16.8'
20. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0'	70°06.2'
21. Connecting point, off Nauset Light	41°50'	69°53'
22. A point south of Chatham "C" Whistle Buoy	41°38'	69°55.2'
22. A point in eastern Vineyard Sound	41°30'	70°33'
24. A point east of Martha's Vineyard	41°22.2'	70°24.6'
25. A point east of Great Pt. Light, Nantucket	41°23.4'	69°57'
26. A point SE of Sankaty Head, Nantucket	41°13'	69°57'
27. A point west of Nantucket	41°15.6'	70°25.2'
28. Squibnocket Lighted Bell Buoy "1"	41°15.7'	70°46.3'
29. Wilbur Point (on Sconticut Neck)	41°35.2'	70°51.2'
30. Mishaum Point (on Smith Neck)	41°31.0'	70°57.2'
31. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7'	71°13.4'
32. Point Judith Lighted Whistle Buoy "2"	41°19.3'	71°28.6'
33. A point off Block Island Southeast Light	41°08.2'	71°32.1'
34. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0'	72°28.6'
35. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5'	73°55.0'
36. Barnegat Lighted Gong Buoy "2"	39°45.5'	73°59.5'
37. A point east of Atlantic City Light	39°21.9'	74°22.7'
38. A point east of Hereford Inlet Light	39°00.4'	74°46'
39. A point east of Cape Henlopen Light	38°47'	75°04'
40. A point east of Fenwick Island Light	38°27.1'	75°02'
41. A point NE of Assateague Island (VA)	38°00'	75°13'
42. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0'	75°33.7'
43. A point NE of Cape Henry	36°55.6'	75°58.5'
44. A point east of Currituck Beach Light	36°22.6'	75°48'
45. Oregon Inlet (NC) Whistle Buoy	35°48.5'	75°30'
46. Wimble Shoals, east of Chicamacomico	35°36'	75°26'
47. A point SE of Cape Hatteras Light	35°12.5'	75°30'
48. Hatteras Inlet Entrance Buoy "HI"	35°10'	75°46'
49. Ocracoke Inlet Whistle Buoy "OC"	35°01.5'	76°00.5'
50. A point east of Cape Lookout Light	34°36.5'	76°30'
51. Southern terminus point	34°35'	76°41'

(b) *Vessels required to use VMS.* The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in, or as modified pursuant to § 648.9(a):

(1) A scallop vessel issued a Full-time or Part-time limited access scallop permit, or an LAGC scallop permit;

(2) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.60;

(3) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(4) A vessel issued a limited access NE multispecies permit that fishes under a NE multispecies Category A or B DAS;

(5) A vessel issued a surfclam (SF 1) or an ocean quahog (OQ 6) open access permit;

(6) Effective January 1, 2009, a vessel issued a Maine mahogany quahog (OQ 7) limited access permit, unless otherwise exempted under paragraph § 648.4(a)(4)(ii)(B)(1);

(7) A limited access monkfish vessel electing to fish in the Offshore Fishery Program in the SFMA, as provided in § 648.95; and

(8) A vessel issued a limited access herring permit (*i.e.*, All Areas Limited Access Permit, Areas 2 and 3 Limited Access Permit, Incidental Catch Limited Access Permit).

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section:

(i) At least every hour, 24 hr a day, throughout the year; or

(ii) At least twice per hour, 24 hr a day, throughout the year, for vessels issued a scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(B).

(2) *Power-down exemption.* (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), or an Atlantic sea scallop limited access permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter;

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must re-power the VMS and submit a valid VMS activity declaration prior to leaving port; or

(D) The vessel has been issued an LAGC permit, is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power-down code that the VMS will be powered down, and the vessel is not required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must re-power the VMS and submit a valid VMS activity declaration prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator.

(ii) *Letter of exemption*—(A) *Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 consecutive hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under this paragraph (c)(2), and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

(d) *Presumption.* If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the

transmission that occurred while the vessel was properly declared out of the scallop fishery, NE multispecies fishery, or monkfish fishery, as applicable, or while the vessel was not at sea.

(e) *VMS notifications*—(1) *VMS installation notification.* (i) The owner of such a vessel specified in paragraph (b) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under paragraph (b) of this section.

(ii) Vessel owners must confirm the VMS unit's operation and communications service to NMFS by calling the Office of Law Enforcement (OLE) to ensure that position reports are automatically sent to and received by NMFS OLE.

(iii) NMFS does not regard the fishing vessel as meeting the VMS requirements until automatic position reports and a manual declaration are received.

(iv) If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the minimum performance criteria, and for the owner to provide documentation of such installation to the Regional Administrator.

(v) The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board, meeting all requirements of this part, prior to fishing under a groundfish DAS.

(vi) NMFS shall provide notification to all affected permit holders providing detailed information on procedures pertaining to VMS purchase, installation, and use.

(2) *Replacement VMS installations.* Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying, as described in this paragraph (e), that the new VMS unit is an operational approved system as described under § 648.9(a).

(3) *Access.* As a condition to obtaining a limited access scallop, multispecies,

an Atlantic herring, a surfclam, ocean quahog, or Maine mahogany quahog permit; or as a condition of using a VMS unit; all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and to location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

(4) *Tampering.* Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that may affect the unit's ability to operate or signal properly, or to accurately compute or report the vessel's position.

(5) *Fishery participation notification.*

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b)-(d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the General Category scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program, the General Category scallop fishery, or any other fishery requiring the operation of VMS, must be received by NMFS prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iii) DAS counting for a vessel that is under the VMS notification requirements of paragraph (b) of this section, with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in paragraph (e)(5) of this section, begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port.

(iv) For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of

this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

(v) The Regional Administrator may authorize or require the use of the call-in system instead of the use of VMS, as described under paragraph (h) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(f) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(1) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (*i.e.*, agrees that the vessel will not possess, retain, or land scallops) for a specific time period by notifying the Regional Administrator through the VMS. An IFQ scallop vessel that is fishing north of 42°20' N. lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(2) *NGOM scallop fishery.* An NGOM scallop vessel is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(3) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the VMS Demarcation Line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery unless, prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery, as specified in paragraphs (e)(5)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(4) *Catch reports.* All scallop vessels fishing in the Sea Scallop Area Access Program as described in § 648.60 are required to submit daily reports through VMS of scallops kept and yellowtail flounder caught (including discarded yellowtail flounder) on each Access Area trip. The VMS catch reporting requirements are specified in § 648.60(a)(9). A vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of scallops kept on each trip declared as a scallop trip or on trips that are not declared through VMS as scallop trips, but on which scallops are caught incidentally. VMS catch reports by IFQ and NGOM scallop vessels must be sent prior to crossing the VMS Demarcation Line on the way back to port at the end of the trip, and must include the amount of scallop meats to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the vessel trip report serial number recorded from that trip's vessel trip report.

(5) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b)(1) must comply with the exemption requirements and notify the Regional Administrator by VMS notification or by call-in notification as follows:

(i) *VMS notification for scallop vessels fishing under exemptions.* (A) Notify the Regional Administrator, via their VMS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(B) Notify the Regional Administrator, via their VMS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(ii) *Call-in notification for scallop vessels fishing under exemptions.* (A) Notify the Regional Administrator by using the call-in system and providing the following information at least 7 days prior to fishing under the exemption:

(1) Owner and caller name and address;

(2) Vessel name and permit number; and

(3) Beginning and ending dates of the exemption period.

(B) Remain under the exemption for a minimum of 7 days.

(C) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Administrator of early withdrawal from the program by calling the call-in system, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hr after notification of early withdrawal is received by the Regional Administrator.

(D) The Regional Administrator will furnish a phone number for call-ins upon request.

(E) Such vessels must comply with the VMS notification requirements specified in paragraph (e) of this section by notifying the Regional Administrator by entering the appropriate VMS code that the vessel is fishing outside of the scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(g) *VMS notification requirements for other fisheries.* (1) Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (e)(1)(iv) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip.

(2) Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs.

(3) A vessel cannot change any aspect of its VMS activity code outside of port, except as follows:

(i) NE multispecies vessels are authorized to change the category of DAS used (*i.e.*, flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A).

(ii) Vessels issued both a NE multispecies permit and a monkfish permit are authorized to change their

DAS declaration from a NE multispecies Category A DAS to a monkfish DAS, while remaining subject to the NE multispecies DAS usage requirements under § 648.92(b)(1)(i), during the course of a trip, as provided at § 648.92(b)(1)(iii)(A).

(4) VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

(h) *Call-in notification.* The owner of a vessel issued a limited access monkfish or red crab permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (h), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

- (i) Owner and caller name and phone number;
- (ii) Vessel name and permit number;
- (iii) Type of trip to be taken;
- (iv) Port of departure; and
- (v) That the vessel is beginning a trip.

(2) A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(3) Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a monkfish Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(i) are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (h) for those monkfish DAS when there is not a concurrent NE multispecies DAS.

(4) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish, or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer immediately upon request.

(5) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information:

- (i) Owner and caller name and phone number;
 - (ii) Vessel name and permit number;
 - (iii) Port of landing; and
 - (iv) That the vessel has ended its trip.
- (6) A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, or when a vessel enters port at the end of a fishing trip, whichever occurs later, unless otherwise specified in paragraph (e)(2)(iii) of this section.

(7) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(8) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1) shall be deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section.

(9) *Vessels electing to use VMS.* (i) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit must use the call-in system specified in paragraph (h) of this section, unless the owner of such vessel has elected to provide the notifications required by paragraph (g) of this section, through VMS as specified under paragraph (h)(9)(ii) of this section. Any vessel issued a limited access monkfish or an Occasional scallop permit that has

elected to provide notifications through VMS must continue to provide notifications through VMS for the entire fishing year.

(ii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by paragraph (e) of this section using the VMS specified in paragraph (b) of this section. For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (e)(2)(i) through (v) of this section. This paragraph (h) does not apply to vessels electing to use the VMS.

(i) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (h) of this section, instead of using the VMS. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

(j) *Additional NE multispecies call-in requirements—*(1) *Spawning season call-in.* With the exception of a vessel issued a valid Small Vessel category permit or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if required by the Regional Administrator) and provide the following information:

- (i) Vessel name and permit number;
- (ii) Owner and caller name and phone number; and
- (iii) Commencement date of the 20-day period.

(2) *Gillnet call-in.* A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (k)(1) of this section.

■ 7. In § 648.11, paragraph (i)(3)(v) is added to read as follows:

§ 648.11 At-sea sampler/observer coverage.

* * * * *

(i) * * *

(3) * * *

(v) Observers must accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

* * * * *

■ 8. In § 648.13, paragraph (d) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel, except for vessels that have not been issued a Federal permit and fish exclusively in state waters.

* * * * *

■ 9. The suspension of paragraphs (a)(50), (53), (121), (129), (130), (132), (146), (153), (165), (173) through (175), and (177), (c)(7), (23) through (26), (33), (39), (50), (51), (57) through (78), (81) through (83), (85), (86), (88), and (89), and (g)(4) and (5) is lifted.

■ 10. Revise § 648.14 to read as follows:

§ 648.14 Prohibitions.

(a) *General prohibitions.* It is unlawful for any person to do any of the following:

(1) Violate any provision of this part, the Magnuson-Stevens Act, or any regulation, notice, or permit issued under the Magnuson-Stevens Act, or any other statute administered by NOAA.

(2) Assist, aid, or abet in the commission of any act prohibited by the Magnuson-Stevens Act; or any regulation, notice, or permit issued under the Magnuson-Stevens Act; or any other statute administered by NOAA.

(3) Fail to report to the Regional Administrator within 15 days any change in the information contained in any permit or permit application.

(4) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(5) Make any false statement or provide any false information on, or in connection with, an application, declaration, record or report under this part.

(6) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, or other requirements of § 648.7, or submit or maintain false information in records and reports required to be kept or filed under § 648.7.

(7) Possess, import, export, transfer, land, or have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(8) Fail to comply with any sea turtle conservation measure specified in 50 CFR parts 222 and 223, including any sea turtle conservation measure implemented by notification in the **Federal Register**.

(9) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

(10) *Food safety program.* (i) Purchase, receive for a commercial purpose other than transport to a testing facility, or process; or attempt to purchase, receive for commercial purpose other than transport to a testing facility; or process, outside Maine, ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(ii) Land ocean quahogs outside Maine that are harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(iii) Fish for, harvest, catch, possess; or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a LOA from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the EEZ bound by the following coordinates in the order stated:

(A) 43° 00' N. lat., 71° 00' W. long.;

(B) 43° 00' N. lat., 69° 00' W. long.;

(C) 41° 39' N. lat., 69° 00' W. long.;

(D) 41° 39' N. lat., 71° 00' W. long., and then ending at the first point.

(iv) Fish for, harvest, catch, or possess; or attempt to fish for, harvest, catch, or possess; any scallops except for scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the EEZ bound by the following coordinates in the order stated:

(A) 41° 39' N. lat., 71° 00' W. long.;

(B) 41° 39' N. lat., 69° 00' W. long.;

(C) 40° 00' N. lat., 69° 00' W. long.;

(D) 40° 00' N. lat., 71° 00' W. long.,

and then ending at the first point.

(b) *Vessel and operator permits.* It is unlawful for any person to do any of the following:

(1) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Alter, erase, or mutilate any permit issued under this part or any document submitted in support of an application for any such permit.

(3) Operate or act as operator of a vessel that fishes for or possesses any species of fish regulated by this part, or that is issued a vessel permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(4) Fish for, possess, or land species regulated under this part with or from a vessel that is issued a limited access or moratorium permit under § 648.4(a) and that has had the horsepower, length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(5) Fish for, take, catch, harvest or land any species of fish regulated by this part for which the vessel is eligible to possess under a limited access or moratorium permit prior to the time the vessel has been reissued the applicable limited access or moratorium permit by NMFS.

(6) Attempt to replace a limited access or moratorium fishing vessel, as specified at § 648.4(a)(1)(i)(E), more than once during a permit year, unless the vessel has been rendered permanently inoperable.

(7) Purchase, possess, or receive from a vessel for a commercial purpose, other than solely for transport on land, any species of fish for which a vessel permit is required under this part, unless the

vessel possesses a valid vessel permit issued under this part.

(8) Transfer, remove, or offload, for a commercial purpose; or attempt to transfer, remove, land, or offload, for a commercial purpose; at sea, any species regulated under this part, unless the transferring vessel has been issued and carries on board a valid LOA from the Regional Administrator, or is otherwise exempted, and the receiving vessel has been issued and has on board a valid Federal permit for the species that is being transferred.

(9) Fish for, possess, or retain fish, during a fishing trip, aboard a Federally permitted vessel that, in the absence of an emergency, has not been operating under its own power for the entire trip.

(c) *Dealer permits.* It is unlawful for any person to do any of the following:

(1) Purchase, possess or receive for a commercial purpose; or attempt to purchase, possess or receive for a commercial purpose; other than solely for transport on land, any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part that fished exclusively in state waters, or pursuant to the § 648.17 NAFO Regulatory Area exemptions.

(2) Sell, barter, trade, or transfer; or attempt to sell, barter, trade, or transfer; other than solely for transport on land, any Atlantic herring, multispecies, or monkfish from a vessel that fished for such species in the EEZ, unless the dealer or transferee has a valid dealer permit issued under § 648.6. A person who purchases and/or receives Atlantic herring at sea for his own personal use as bait, and does not have purse seine, mid-water trawl, pelagic gillnet, sink gillnet, or bottom trawl gear on board, is exempt from the requirement to possess an Atlantic herring dealer permit.

(d) *VMS.* It is unlawful for any person to do any of the following:

(1) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, VMS unit, or VMS signal required to be installed on or transmitted by vessel owners or operators required to use a VMS by this part.

(2) Fail to submit the appropriate VMS activity code for the intended activity at the appropriate time, in accordance with § 648.10.

(e) *Observer program.* It is unlawful for any person to do any of the following:

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler conducting his or her duties; or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; or any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

(2) Refuse to carry onboard a vessel an observer or sea sampler if requested to do so by the Regional Administrator or the Regional Administrator's designee.

(3) Fail to provide information, notification, accommodations, access, or reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel as specified in § 648.11.

(4) Submit false or inaccurate data, statements, or reports.

(f) *Research and experimental fishing.* It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(g) *Squid, mackerel, and butterfish—*
(1) *All persons.* Unless participating in a research activity as described in § 648.21(g), it is unlawful for any person to do any of the following:

(i) *Possession and landing.* Take, retain, possess, or land more mackerel, squid or butterfish than specified under, or after the effective date of, a notification issued under § 648.22.

(ii) *Transfer and purchase.* (A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; mackerel, squid, or butterfish caught by a vessel that has not been issued a Federal mackerel, squid, and butterfish vessel permit, unless the vessel fishes exclusively in state waters.

(B) Transfer *Loligo*, *Illex*, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring species for which the vessels are permitted, or have a valid squid/butterfish incidental catch permit and the appropriate LOA from the Regional Administrator.

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.21(g), it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(i) *General requirement.* Fail to comply with any measures implemented pursuant to § 648.21.

(ii) *Possession and landing.* (A) Possess more than the incidental catch allowance of *Loligo* or butterfish, unless issued a *Loligo* squid and butterfish fishery moratorium permit.

(B) Possess more than the incidental catch allowance of *Illex* squid, unless issued an *Illex* squid moratorium permit.

(C) Take, retain, possess, or land mackerel, squid or butterfish in excess of a possession allowance specified in § 648.22.

(D) Possess 5,000 lb (2.27 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

(E) Take, retain, possess, or land mackerel, squid, or butterfish after a total closure specified under § 648.22.

(iii) *Gear and vessel requirements.* (A) Fish with or possess nets or netting that do not meet the gear requirements for Atlantic mackerel, *Loligo*, *Illex*, or butterfish specified in § 648.23(a); or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a)(3)(ii).

(B) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower (shp) of 3,000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2). It shall be presumed that the Atlantic mackerel on board were harvested in or from the EEZ, unless the preponderance of reliable evidence available indicates otherwise.

(C) Enter or fish in the mackerel, squid, and butterfish bottom trawling restricted areas, as described in § 648.23(a)(4).

(3) *Charter/party restrictions.* Unless participating in a research activity as described in § 648.21(g), it is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(i) Violate any recreational fishing measures established pursuant to § 648.21(d).

(ii) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(iii) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(4) *Presumption.* For purposes of this part, the following presumption applies: All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

(h) *Atlantic salmon.* Unless participating in a research activity as described in § 648.21(g), it is unlawful for any person to do any of the following:

(1) *Possession and landing.* (i) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ. It shall be presumed that the Atlantic salmon on board were harvested in or from the EEZ, unless the preponderance of reliable evidence available indicates otherwise.

(ii) Transfer, directly or indirectly; or attempt to transfer, directly or indirectly; to any vessel any Atlantic salmon taken in or from the EEZ.

(2) [Reserved]

(i) *Atlantic sea scallops*—(1) *All persons.* It is unlawful for any person to do any of the following:

(i) *Permit requirement.* Fish for, possess, or land, scallops without the vessel having been issued and carrying onboard a valid scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(ii) *Gear and crew requirements.* Have a shucking or sorting machine on board a vessel while in possession of more than 400 lb (181.4 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(iii) *Possession and landing.* (A) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport on land:

(1) In excess of 40 lb (18.1 kg) of shucked scallops at any time, 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(i) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

(iii) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit and is properly declared into the IFQ scallop fishery.

(iv) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit, and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has not been harvested.

(v) The scallops were harvested by a vessel that has been issued and carries on board an Incidental scallop permit allowing up to 40 lb (18.1 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops; is carrying an at-sea observer; and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.

(2) In excess of 200 lb (90.7 kg) of shucked scallops at any time, 25 bu (8.8 hL) of in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(i) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program.

(iii) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery.

(iv) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(v) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit allowing up to 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops; is carrying an at-sea observer; and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.

(3) In excess of 400 lb (181.4 kg) of shucked scallops at any time, 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

(i) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(ii) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit issued pursuant to § 648.4(a)(2)(i) and is properly declared into the scallop DAS or Area Access program.

(iii) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54.

(iv) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit, is carrying an at-sea observer, and is authorized by the Regional Administrator to have, and the vessel does not exceed, an increased possession limit to compensate for the cost of carrying the observer.

(iv) *Transfer and purchase.* (A) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(B) Sell, barter, or trade, or otherwise transfer scallops from a vessel; or attempt to sell, barter or trade, or otherwise transfer scallops from a vessel; for a commercial purpose, unless the vessel has been issued a valid scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(C) Purchase, possess, or receive for commercial purposes; or attempt to purchase or receive for commercial purposes; scallops from a vessel other than one issued a valid limited access or general scallop permit, unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scallops harvested from the EEZ by a vessel issued a Federal scallop permit, unless the transferee has a valid scallop dealer permit.

(v) *Ownership cap.* Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits and confirmations of permit history, except as provided in § 648.4(a)(2)(i)(M).

(vi) *Closed area requirements.* (A) Fish for scallops in, or possess or land

scallops from, the areas specified in §§ 648.58 and 648.61.

(B) Transit or be in the areas described in §§ 648.58 or 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in § 648.23(b), or unless there is a compelling safety reason to be in such areas.

(vii) *Scallop sectors.* Fail to comply with any of the requirements or restrictions for general category scallop sectors specified in § 648.63.

(viii) *Scallop research.* Fail to comply with any of the provisions specified in § 648.56.

(ix) *Observer program.* (A) Refuse, or fail, to carry onboard an observer after being requested to by the Regional Administrator or the Regional Administrator's designee.

(B) Fail to provide information, notification, accommodations, access, or reasonable assistance to a NMFS-approved observer conducting his or her duties aboard a vessel, as specified in § 648.11.

(C) Fail to comply with the notification, observer services procurement, and observer services payment requirements of the sea scallop observer program specified in § 648.11(g).

(x) *Presumption.* For purposes of this section, the following presumption applies: Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(2) *Limited access scallop vessel permit holders.* It is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(i) *Minimum shell height.* Land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(ii) *Vessel, gear, and crew restrictions.* (A) Possess more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 5 bu (1.76 hL) of in-shell scallops, or fishing for scallops in the EEZ:

(1) Fish with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(2) Fail to comply with any chafing gear or other gear obstruction restrictions specified in § 648.51(a)(3).

(3) Fail to comply with the dredge vessel gear restrictions specified in § 648.51(b).

(4) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(5) Fish under the small dredge program specified in § 648.51(e) with more than five persons on board the vessel, including the operator, unless otherwise authorized by the Regional Administrator or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

(6) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator, or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

(7) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(8) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(9) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(iii) *Possession and landing.* (A) Land scallops after using up the vessel's annual DAS allocation or land scallops on more than one trip per calendar day when not participating under the DAS allocation program pursuant to § 648.10, unless exempted from DAS allocations as provided in the state waters exemption, specified in § 648.54.

(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops once inside the VMS Demarcation Line on or by a vessel that, at any time during the trip, fished in or

transited any area south of 42°20' N. lat; or fished in any Sea Scallop Area Access Program specified in § 648.60, except as provided in the state waters exemption, as specified in § 648.54.

(C) Fish for or land per trip, or possess at any time, scallops in the NGOM scallop management area after notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20' N. lat. and the vessel only transits the NGOM scallop management area with the vessel's fishing gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(iv) *DAS.* (A) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations, or when not properly declared into the DAS or an Area Access program pursuant to § 648.10, unless the vessel has been issued a LAGC scallop permit pursuant to § 648.4(a)(2)(ii) and has properly declared into a general category scallop fishery, unless exempted from DAS allocations as provided in state waters exemption, specified in § 648.54.

(B) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.60(a)(3)(ii).

(C) Fail to comply with any requirement for declaring in or out of the DAS allocation program or other notification requirements specified in § 648.10.

(v) *VMS requirements.* (A) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(B) If the vessel is not subject to VMS requirements specified in § 648.10(b), fail to comply with the requirements of the call-in system specified in § 648.10(c).

(vi) *Scallop access area program.* (A) Fail to comply with any of the provisions and specifications of § 648.60.

(B) Declare, initiate a trip into, or fish in the areas specified in § 648.59(b) through (d) after the effective date of the notice in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(C) Possess or retain yellowtail flounder in or from the areas specified in § 648.59(b) through (d) after the effective date of the notice in the **Federal Register** stating that the

yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.60.

(E) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(vii) *State waters exemption program.* Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

(3) *LAGC scallop vessels.* It is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

(i) *Permit requirements.* (A) Fail to comply with the LAGC scallop permit restrictions as specified in § 648.4(a)(2)(ii)(G) through (O).

(B) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing unless the vessel has been issued an Incidental scallop permit.

(ii) *Gear requirements.* (A) Possess or use trawl gear that does not comply with any of the provisions or specifications in § 648.51(a), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) Possess or use dredge gear that does not comply with any of the provisions or specifications in § 648.51(b).

(iii) *Possession and landing.* (A) Land scallops more than once per calendar day.

(B) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.52.

(C) Declare into, or leave port for, the NGOM scallop management area after the effective date of a notification published in the **Federal Register** stating that the general category scallop TAC has been harvested as specified in § 648.52 or § 648.62.

(D) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of a notification published in the **Federal Register** that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20' N. lat., the vessel is transiting the NGOM scallop management area, and

the vessel's fishing gear is properly stowed and unavailable for immediate use in accordance with § 648.23.

(E) Fish for, land, or possess more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops at any time after 10 days from being notified that his or her appeal for an LAGC scallop permit has been denied and that the denial is the final decision of the Department of Commerce, unless the vessel holds a valid Incidental scallop permit.

(iv) *VMS requirements.* (A) Fail to comply with any of the VMS requirements specified in §§ 648.10, 648.60, or 648.62.

(B) Fail to comply with any requirement for declaring in or out of the general category scallop fishery or other notification requirements specified in § 648.10(b).

(v) *Scallop access area program.* (A) Fail to comply with any of the requirements specified in § 648.60.

(B) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of a notification published in the **Federal Register** stating that the general category scallop TAC has been harvested or that the number of General Category trips have been taken, as specified in § 648.60.

(C) Declare into, or leave port for, an area specified in § 648.59(b) through (d) after the effective date of a notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(D) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(vi) *Sectors.* Fail to comply with any of the requirements and restrictions for General Category sectors and harvesting cooperatives specified in § 648.63.

(4) *IFQ scallop permit.* It is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) *Possession and landing.* (A) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless the vessel is participating in the Area Access Program specified in § 648.60; is carrying an observer as specified in § 648.11; and, an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in § 648.60(d)(2).

(B) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.8 hL) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.6 hL) in-shell scallops, or when the vessel is not declared into the NGOM scallop management area and is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use in accordance with § 648.23.

(C) Possess more than 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line and not participating in the Access Area Program, or possess or land per trip more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless exempted from DAS allocations as provided in § 648.54.

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.60.

(E) Fish for, possess, or land scallops after the effective date of a notification in the **Federal Register** that the quarterly TAC specified in § 648.53(a)(8) has been harvested.

(F) Fish for, possess, or land scallops in excess of a vessel's IFQ.

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the state waters exemption program, specified at § 648.54.

(H) Land scallops more than once per calendar day.

(ii) *Owner and allocation cap.* (A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop TAC as specified at § 648.53(a)(5)(ii) and (iii).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2 percent of the total IFQ scallop TAC as specified in § 648.53(a)(5).

(iii) *IFQ Transfer Program.* (A) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop TAC.

(B) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2 percent of the total IFQ scallop TAC.

(C) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(5).

(D) Request to transfer IFQ that has already been temporarily transferred from an IFQ scallop vessel in the same fishing year.

(E) Transfer scallop IFQ to a vessel after the transferring vessel has landed scallops in the same fishing year.

(F) Transfer a portion of a vessel's scallop IFQ.

(G) Transfer scallop IFQ to, or receive scallop IFQ from, a vessel that has not been issued a valid IFQ scallop permit.

(iv) *Cost Recovery Program.* Fail to comply with any of the cost recovery requirements specified under § 648.53(g)(4).

(5) *NGOM scallop permit.* It is unlawful for any person owning or operating a vessel issued an NGOM scallop permit to do any of the following:

(i) Declare into or leave port for a scallop trip, or fish for or possess scallops outside of the NGOM Scallop Management Area as defined in § 648.62.

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops in or from the NGOM scallop management area, or seaward of the VMS Demarcation Line more than 50 bu (17.6 hL) of in-shell scallops.

(iii) Fish for, possess, or land scallops after the effective date of notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested.

(6) *Incidental scallop permit.* It is unlawful for any person owning or operating a vessel issued an Incidental scallop permit to fish for, possess, or retain, more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

(j) *Atlantic surfclam and ocean quahog.* It is unlawful for any person to do any of the following:

(1) *Possession and landing.* (i) Fish for surfclams or ocean quahogs in any area closed to surfclam or ocean quahog fishing.

(ii) Shuck surfclams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Administrator under the terms of § 648.74.

(iii) Fish for, retain, or land both surfclams and ocean quahogs in or from the EEZ on the same trip.

(iv) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip

designated as a surfclam fishing trip under § 648.15(b); or fish for, retain, or land surfclams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(v) Fail to offload any surfclams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(vi) Land or possess any surfclams or ocean quahogs harvested in or from the EEZ without having been issued, or in excess of, an individual allocation.

(2) *Transfer and purchase.* (i) Receive for a commercial purpose other than solely for transport on land, surfclams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(ii) Transfer any surfclams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than solely for transport on land, without a surfclam or ocean quahog processor or dealer permit.

(iii) Offload unshucked surfclams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(3) *Gear and tags requirements.* (i) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(ii) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Administrator.

(iii) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(iv) Tag a cage of surfclams with an ocean quahog cage tag, or tag a cage of ocean quahogs with a surfclam cage tag.

(v) Possess an empty cage to which a cage tag required by § 648.75 is affixed, or possess any cage that does not contain surfclams or ocean quahogs and to which a cage tag required by § 648.75 is affixed.

(vi) Land or possess, after offloading, any cage holding surfclams or ocean quahogs without a cage tag or tags required by § 648.75, unless the person can demonstrate the inapplicability of the presumptions set forth in § 648.75(h).

(vii) Sell null and void tags.

(4) *VMS requirements.* (i) Fail to maintain an operational VMS unit as specified in § 648.9, and comply with any of the notification requirements specified in § 648.15(b) including:

(A) Fish for, land, take, possess, or transfer surfclams or ocean quahogs under an open access surfclam or ocean quahog permit without having provided proof to the Regional Administrator that the vessel has a fully functioning VMS unit on board the vessel and declared a surfclam, ocean quahog, or Maine mahogany quahog fishing activity code via the VMS unit prior to leaving port as specified at § 648.15(b).

(B) Fish for, land, take, possess, or transfer ocean quahogs under a limited access Maine mahogany quahog permit without having provided proof to the Regional Administrator of NMFS that the vessel has a fully functioning VMS unit on board the vessel and declared a fishing trip via the VMS unit as specified at § 648.15(b).

(5) *Maine mahogany quahog zone.* (i) Land unshucked surfclams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.

(ii) Land unshucked surfclams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(iii) Offload unshucked surfclams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(iv) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(v) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the **Federal Register** notifying participants that Maine mahogany quahog quota is no longer available for the respective fishing year, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.70.

(6) *Presumptions.* For purposes of this part, the following presumptions apply:

(i) Possession of surfclams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water in closed areas is prima facie evidence that such vessel was fishing in violation

of the provisions of the Magnuson-Stevens Act and these regulations.

(ii) Surfclams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70.

(iii) Surfclams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surfclam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this part, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.70 or § 648.75(b).

(k) *NE multispecies*—(1) *Permit requirements for all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Fish for, possess, or land NE multispecies, unless:

(A) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid Federal NE multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has a valid operator's permit and has it on board the vessel.

(B) The NE multispecies were harvested by a vessel not issued a Federal NE multispecies permit, nor eligible to renew or be reissued a limited access NE multispecies permit as specified in § 648.4(b)(2), that fishes for NE multispecies exclusively in state waters.

(C) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel.

(D) Any haddock and up to 100 lb of other regulated NE multispecies were harvested by a vessel that has an All Areas limited access herring permit

and/or an Areas 2 and 3 limited access herring permit on a trip that did not use a NE multispecies DAS, is subject to the requirements specified in § 648.80(d) and (e), and may not sell the fish for human consumption.

(E) Otherwise specified in § 648.17.

(ii) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; NE multispecies from one vessel to another vessel, unless both vessels have not been issued Federal NE multispecies permits and both fish exclusively in state waters, unless authorized in writing by the Regional Administrator, or otherwise allowed.

(iii) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer; for a commercial purpose any NE multispecies from a trip, unless:

(A) The vessel is holding a Federal NE multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89.

(B) The NE multispecies were harvested by a vessel without a Federal NE multispecies permit that fishes for NE multispecies exclusively in state waters.

(C) Or as otherwise specified in § 648.17.

(iv) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a Federal NE multispecies vessel permit without having been issued and possessing a valid operator's permit.

(2) *Permit requirements for vessel and operator permit holders.* It is unlawful for any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel, or its replacement, increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i)(E) and (F).

(ii) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(3) *Dealer requirements.* (i) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species are purchased or received from a member of

an approved Sector, as specified at § 648.87, that is exempt from such possession limits in accordance with an approved Sector Operations Plan.

(ii) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(4) *NAFO.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), to fail to comply with the exemption specifications in § 648.17.

(5) *Regulated Mesh Areas.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

(ii) Enter or fish in the Gulf of Maine, Georges Bank, or Southern New England Regulated Mesh Areas, except as provided in § 648.80(a)(3)(vi) and (b)(2)(vi), and, for purposes of transiting, all gear (other than exempted gear) must be stowed in accordance with § 648.23(b).

(iii) *Gulf of Maine and Georges Bank Regulated Mesh Areas.* (A) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the

minimum mesh size specified in § 648.80(a)(3) and (4); except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i); unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(B) Fish within the areas described in § 648.80(a)(6) with net mesh smaller than the minimum size specified in § 648.80(a)(3) or (4).

(iv) *Southern New England Regulated Mesh Area.* Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), net mesh smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(v) *Mid-Atlantic Regulated Mesh Area.* Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller than the minimum mesh size specified in § 648.80(c)(2); except as provided in § 648.80(c)(3), (d), (e), and (i); or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(vi) *Mid-water trawl exempted fishery.* (A) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(B) Fish for the species specified in § 648.80(d) or (e) with a net mesh smaller than the applicable mesh size specified in § 648.80(a)(3) or (4), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(vii) *Scallop vessels.* (A) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

(B) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a

vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(viii) *Northern shrimp and small mesh multispecies exempted fisheries.*

(A) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5).

(B) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(9)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(5)(ii) or (a)(9)(ii).

(ix) *Winter flounder state exemption program.* Violate any provision of the state waters winter flounder exemption program as provided in § 648.80(i).

(6) *Gear requirements—(i) For all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) Obstruct or constrict a net as described in § 648.80(g)(1) or (2).

(B) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

(C) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(D) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(E) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in § 648.80(g)(6)(i) and (ii), and § 648.81(f)(2)(ii), or unless otherwise

authorized in writing by the Regional Administrator.

(F) Fish for, land, or possess NE multispecies harvested with the use of de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(G) Possess or use de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(ii) *For vessel and operator permit holders.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) *Gillnet gear.* (1) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS with gillnet gear, fail to comply with gillnet tagging requirements specified in §§ 648.80(a)(3)(iv)(B)(4), (a)(3)(iv)(C), (a)(4)(iv)(B)(3), (b)(2)(iv)(B)(3), and (c)(2)(v)(B)(3), or fail to produce immediately, or cause to be produced immediately, gillnet tags when requested by an authorized officer.

(2) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

(3) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or that was issued to another vessel.

(4) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(5) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(i).

(B) *Hook gear.* Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(F).

(7) *Closed areas and EFH—(i) All persons.* It is unlawful for any person, including any owner or operator of a

vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(B) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under § 648.85.

(C) *Restricted gear areas.* (1) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), (l)(1), and (m)(1) on a fishing vessel with mobile gear during the time periods specified in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2), except as provided in § 648.81(j)(2), (k)(2), (l)(2), and (m)(2).

(2) Fish, or be in the areas described in § 648.81(j)(1), (k)(1), and (l)(1) on a fishing vessel with lobster pot gear during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(3) Deploy in or fail to remove lobster pot gear from the areas described in § 648.81(j)(1), (k)(1), and (l)(1), during the time periods specified in § 648.81(j)(2), (k)(2), and (l)(2).

(D) *GB Seasonal Closure Area.* Enter, fail to remove gear from, or be in the areas described in § 648.81(g)(1) through (i)(1) during the time period specified, except as provided in § 648.81(d), (g)(2), (h)(2), and (i)(2).

(E) *Closed Area I.* Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(F) *Closed Area II.* Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

(G) *Nantucket Lightship Closure Area.* Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

(ii) *Vessel and permit holders.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(A) *EFH closure area restrictions.* If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the EFH closure areas described in § 648.81(h)(1)(i) through (vi).

(B) [Reserved.]

(8) *DAS restrictions for all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter

under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) For vessels issued a limited access NE multispecies permit, or those issued a limited access NE multispecies permit and a limited access monkfish permit (Category C, D, F, G, or H), but not fishing under the limited access monkfish Category A or B provisions as allowed under § 648.92(b)(2), call into the DAS program prior to 1 hr before leaving port.

(ii) Call in DAS in excess of those allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

(9) *DAS restrictions for vessel and operator permit holders.* It is unlawful for any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

(i) *Differential DAS Areas.* (A) If fishing under a NE multispecies Category A DAS in either the GOM Differential DAS Area, or the SNE Differential DAS Area defined under § 648.82(e)(2)(i), fail to declare into the area through VMS as required under § 648.82(e)(2)(ii).

(B) [Reserved.]

(ii) *DAS Leasing Program.* (A) Provide false information on an application, required by § 648.82(k)(4)(xi), to downgrade the DAS Leasing Program baseline.

(B) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(C) Provide false information on, or in connection with, an application, required under § 648.82(k)(3), to effectuate the leasing of NE multispecies DAS.

(D) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(E) Act as lessor or lessee of NE multispecies DAS, if the lessor's or the lessee's vessels do not comply with the size restrictions specified in § 648.82(k)(4)(ix).

(F) Sub-lease NE multispecies DAS.

(G) Lease more than the maximum number of DAS allowable under § 648.82(k)(4)(iv).

(H) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(I) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(J) Lease NE multispecies DAS if the number of unused allocated DAS is less

than the number of DAS requested to be leased.

(K) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii).

(L) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

(iii) *DAS Transfer Program.* (A) Transfer NE multispecies DAS, or use transferred DAS, that have not been approved for transfer by the Regional Administrator, as specified in § 648.82(l).

(B) Provide false information on, or in connection with, an application, required by § 648.82(l)(2), for a NE multispecies DAS transfer.

(C) Permanently transfer only a portion of a vessel's total allocation of DAS.

(D) Permanently transfer NE multispecies DAS between vessels, if such vessels do not comply with the size restrictions specified in § 648.82(l)(1)(ii).

(iv) *Gillnet fishery.* (A) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

(B) If a vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS, fail to comply with the gillnet requirements and restrictions specified in § 648.82(j).

(C) If a vessel has been issued a limited access Day gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(1).

(D) If a vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(v) *Spawning blocks.* Fail to declare, and be, out of the NE multispecies DAS program as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(vi) *DAS notification.* (A) For purposes of DAS notification, if required, or electing, to have a VMS unit under § 648.10:

(1) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(2) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage specified in § 648.10(b).

(B) Fail to comply with any provision of the DAS notification program specified in § 648.10.

(vii) *Charter/party vessels.* Participate in the DAS program pursuant to § 648.82 when carrying passengers for hire on board a vessel during any portion of a fishing trip.

(10) *Gear marking requirement for all persons.* It is unlawful for any person, including any owner or operator of a vessel issued a valid NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the gear-marking requirements of § 648.84.

(11) *U.S./Canada Resource Management Area—(i) Possession and landing restrictions of the U.S./Canada Area—(A) All Persons.* (1) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(2) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b).

(3) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(4) If fishing both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(2) through (4).

(B) *Vessel and operator permit holders.* Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(ii) *Gear requirements for all persons.* If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl, flounder trawl net, or Ruhlle trawl as specified in § 648.85(a)(3)(iii) and (b)(6)(iv)(J)(1); unless using other gear authorized under § 648.85(b)(6) or (8).

(iii) *Notification and VMS requirements for all persons.* (A) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

(B) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the

applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

(C) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(D) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), but not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(E) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(ii)(A)(1).

(F) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive requirements that apply to any area fished, including the DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(ii)(A).

(iv) *Reporting requirements for all persons.* (A) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(B) Fail to comply with the reporting requirements under § 648.85(a)(3)(ii)(A)(2) when fishing inside and outside of the Eastern U.S./Canada Area on one trip.

(v) *DAS—(A) All Persons.* If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8) on the same trip, fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in § 648.85(b)(8)(v)(J).

(B) *Vessel and operator permit holders.* (1) If fishing under a NE multispecies Category A DAS in one of the Differential DAS Areas defined in § 648.82(e)(2)(i), and under the restrictions of one or more of the SAPs under § 648.85, fail to comply with the most restrictive regulations.

(2) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required by § 648.85(a)(3)(ii)(A).

(vi) *Closure of the U.S./Canada Area for all persons.* If fishing under a NE multispecies DAS, declare into, enter, or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed under the authority of the Regional Administrator as described in

§ 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8).

(12) *SAP restrictions—(i) General restrictions for all persons.* (A) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(B) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(ii) *General restrictions for vessel and operator permit holders.* Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a SAP, as described in §§ 648.85(b)(3)(xi), 648.85(b)(7)(iv)(H), or 648.85(b)(8)(v)(I).

(iii) *Closed Area II Yellowtail Flounder SAP restrictions for all persons.* (A) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with § 648.85(b)(3)(i) through (xi).

(B) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v).

(C) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in § 648.85(b)(3)(iii).

(D) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vi) or (vii).

(E) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(iv) *Southern New England/Mid-Atlantic Winter Flounder SAP restrictions for all persons.* If fishing under the SNE/MA Winter Flounder SAP described in § 648.85(b)(4), fail to comply with § 648.85(b)(4)(i) through (iv).

(v) *Regular B DAS Program restrictions for vessel and operator permit holders.* (A) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with §§ 648.85(b)(6)(iv)(A) through (J).

(B) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail

to use a haddock separator trawl as described in § 648.85(a)(3)(iii)(A), or other approved gear as described in § 648.85(b)(6)(iv)(J).

(C) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(1) or (b)(8)(v)(E)(1), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(3).

(D) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(6)(iv)(E).

(E) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(F) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(G) *DAS usage restrictions.* (1) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in § 648.82(d)(2)(i)(A).

(2) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(3) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(G) or (H), or (b)(6)(vi).

(H) *VMS requirements.* (1) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(2) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(I) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(J) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(vi) *Closed Area I Hook Gear Haddock SAP restrictions for vessel and operator permit holders.* (A) If fishing in the

Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi).

(B) Fish in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7) outside of the season specified in § 648.85(b)(7)(iii).

(C) Fish in the Closed Area I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(I) or (b)(7)(vi)(F).

(D) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable DAS use restrictions specified in § 648.85(b)(7)(iv)(A), and (b)(7)(v)(A) or (b)(7)(vi)(A).

(E) *VMS requirements.* (1) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(2) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(D).

(F) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(G) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(B) or (b)(7)(vi)(B).

(H) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable landing limits specified in § 648.85(b)(7)(iv)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C).

(I) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable reporting requirement specified in § 648.85(b)(7)(v)(D) or (b)(7)(vi)(D).

(vii) *Eastern U.S./Canada Haddock SAP Restrictions—(A) All Persons.* (1) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with § 648.85(b)(8)(v).

(2) *VMS and declaration requirements.* (i) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in § 648.85(b)(8)(ii), fail to comply with

the VMS requirements in § 648.85(b)(8)(v)(B).

(ii) If fishing under a NE multispecies DAS, fish in the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

(3) Enter or fish in the Eastern U.S./Canada Haddock SAP outside of the season specified in § 648.85(b)(8)(iv).

(4) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(6)(iv)(J)(1) or (b)(8)(v)(E)(1), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(3).

(5) *Possession limits and restrictions.*

(i) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP, exceed the possession limits specified in § 648.85(b)(8)(v)(F).

(ii) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions of § 648.85(b)(8)(v)(A) through (I).

(6) If fishing in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the reporting requirements of § 648.85(b)(8)(v)(G).

(7) If fishing under the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the observer notification requirements of § 648.85(b)(8)(v)(C).

(B) *Vessel and operator permit holders.* (1) If fishing in the Eastern U.S./Canada Haddock SAP Area, and other portions of the Eastern U.S./Canada Haddock SAP Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(2) *DAS usage restrictions.* (i) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in §§ 648.85(b)(8)(v)(F) or 648.86.

(ii) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required by § 648.85(b)(8)(v)(J).

(3) Fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), if the SAP is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(13) *Possession and landing restrictions—(i) All persons.* (A) Under § 648.85 or § 648.86, fail to offload regulated species subject to a landing limit based on a DAS fished at the end

of a fishing trip, as required by § 648.86(i).

(B) *Scallop vessels.* Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54, or fishing under a general scallop permit, unless said fish are caught, possessed, or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a Federal NE multispecies permit and fishes for NE multispecies exclusively in state waters.

(ii) *Vessel and operator permit holders.* (A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (g), and (h); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (e), (g), (h), and (j), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(C) Fish for, possess at any time during a trip, or land regulated NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted by §§ 648.82(b)(5) or 648.89.

(D) *Atlantic cod.* (1) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

(2) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

(3) *Cod running clock.* (i) For vessels fishing in the NE multispecies DAS program under the provisions of the call-in system, described in § 648.10(c), fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A) and (b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(ii) For vessels fishing in the NE multispecies DAS program under the provisions of VMS, described in § 648.10(b), fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(2)(ii)(B).

(4) Fail to declare through VMS an intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as

required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

(E) *Atlantic halibut.* Possess or land per trip more than the possession or landing limit specified under § 648.86(c).

(F) *White hake.* Possess or land more white hake than allowed under § 648.86(e).

(G) *Yellowtail flounder.* While fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(H) *GB winter flounder.* Possess or land more GB winter flounder than allowed under § 648.86(j).

(14) *Sector requirements for all persons—*(i) *General requirements.* (A) If fishing under an approved sector, as authorized under § 648.87, fail to abide by the restrictions specified in § 648.87(b)(1).

(B) If fishing under an approved sector, as authorized under § 648.87, fail to remain in the sector for the remainder of the fishing year as required by § 648.87(b)(1).

(C) If fishing under an approved sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year or, if fishing under a NE multispecies DAS, fish in an approved sector in a given fishing year, unless otherwise provided under § 648.87(b)(1)(xii).

(D) If a vessel has agreed to participate in a sector, fail to remain in the sector for the entire fishing year, as required under § 648.87(b)(1)(xi).

(E) If a vessel is removed from a sector for violating the sector rules, fish under the NE multispecies regulations for non-sector vessels.

(ii) *GB Cod Hook Sector.* If fishing under the GB Cod Hook Sector specified under § 648.87(d)(1), fish with gear other than jigs, demersal longline, or handgear.

(iii) *GB Fixed Gear Sector.* If fishing under the GB Fixed Gear Sector specified under § 648.87(d)(2), fish with gear other than jigs, non-automated demersal longline, handgear, or sink gillnets.

(15) *Open access permit restrictions—*(i) *All persons.* (A) Violate any provision of the open access permit restrictions of § 648.88.

(B) Possess on board gear other than that specified in § 648.88(a)(2)(i), or fish with hooks greater than the number specified in § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(C) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(ii) *Vessel and operator permit holders—*(A) *Open access Handgear permit.* It is unlawful for any person owning or operating a vessel issued an open access NE multispecies Handgear permit to do any of the following, unless otherwise specified in § 648.17:

(1) Violate any provision of the open access Handgear permit restrictions of § 648.88(a).

(2) Possess, at any time during a trip, or land per trip, more than the possession limit of NE multispecies specified in § 648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in § 648.89.

(3) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

(4) Possess or land NE multispecies during the time period specified in § 648.88(a)(2).

(B) *Scallop multispecies possession limit permit.* It is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of NE multispecies specified in § 648.88(c), or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.

(C) *Open access NE multispecies (Non-regulated species permit).* It is unlawful for any owner or operator of a vessel issued a valid open access NE multispecies permit to possess or land any regulated species as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

(16) *Recreational and charter/party requirements.* It is unlawful for the owner or operator of a charter or party boat issued a valid Federal NE multispecies permit, or for a recreational vessel, as applicable, unless otherwise specified in § 648.17, to do any of the following:

(i) *Possession and landing.* Possess cod, haddock, or Atlantic halibut in excess of the possession limits specified in § 648.89(c).

(ii) *Gear requirements.* Fish with gear in violation of the restrictions of § 648.89(a).

(iii) *Seasonal and area restrictions.*

(A) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(v) or (c)(2)(v), or fail to abide by the appropriate restrictions if transiting with cod on board.

(B) If the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified.

(C) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in § 648.89(c)(1)(v), or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing under § 648.89(c)(2)(v).

(iv) *Restriction on sale and transfer.* Sell, trade, barter, or otherwise transfer; or attempt to sell, trade, barter or otherwise transfer; NE multispecies for a commercial purpose as specified in § 648.89(d).

(17) *Presumptions.* For purposes of this part, the following presumptions apply:

(i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(l) *Small-mesh multispecies.* (1) It is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer; or attempt to land,

offload, or otherwise transfer; small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) *Presumptions.* For purposes of this part, the following presumption applies: All small-mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

(m) *Monkfish.* It is unlawful for any person owning or operating a vessel that engages in fishing for monkfish to do any of the following, unless otherwise fishing in accordance with, and exempted under, the provisions of § 648.17:

(1) *Permit requirement.* (i) Fish for, possess, retain, or land monkfish, unless:

(A) The monkfish are being fished for, or were harvested, in or from the EEZ by a vessel issued a valid monkfish permit under § 648.4(a)(9).

(B) The vessel does not hold a valid Federal monkfish permit and fishes for or possesses monkfish exclusively in state waters.

(C) The vessel does not hold a valid Federal monkfish permit and engages in recreational fishing.

(D) The monkfish were harvested from the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(ii) Fish for, possess, or land monkfish in or from the EEZ without having been issued and possessing a valid operator permit pursuant to § 648.5, and this permit is onboard the vessel.

(2) *Gear requirements.* (i) Fish with or use nets with mesh size smaller than the minimum mesh size specified in § 648.91(c) while fishing under a monkfish DAS.

(ii) Fail to immediately produce gillnet tags when requested by an authorized officer.

(iii) Tag a gillnet with, or otherwise use or possess, a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or use or possess a false gillnet tag.

(iv) Sell, transfer, or give away gillnet tags.

(v) If the vessel has been issued a valid limited access monkfish permit, and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(3) *Area restrictions.* (i) Fail to comply with the restrictions applicable to limited access Category G and H vessels specified under § 648.92(b)(9).

(ii) Fail to comply with the NFMA requirements specified at § 648.94(f).

(4) *DAS requirements.* (i) Fail to comply with the monkfish DAS provisions specified at § 648.92 when

issued a valid limited access monkfish permit.

(ii) Combine, transfer, or consolidate monkfish DAS allocations.

(5) *Size limits.* Fail to comply with the monkfish size limit restrictions of § 648.93 when issued a valid monkfish permit under § 648.4(a)(9) or when fishing in the EEZ.

(6) *Possession and landing.* (i) Fail to comply with the monkfish possession limits and landing restrictions, including liver landing restrictions, specified under § 648.94.

(ii) Violate any provision of the monkfish incidental catch permit restrictions as specified in §§ 648.4(a)(9)(ii) or 648.94(c).

(7) *Transfer and sale.* (i) Sell, barter, trade, or otherwise transfer for a commercial purpose; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose; any monkfish from a vessel without having been issued a valid monkfish vessel permit, unless the vessel fishes for monkfish exclusively in state waters, or exclusively in the NAFO Regulatory Area in accordance with the provisions specified under § 648.17.

(ii) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in § 648.94.

(iii) Land, offload, or otherwise transfer; or attempt to land, offload, or otherwise transfer; monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(8) *Presumption.* For purposes of this part, the following presumption applies: All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of evidence demonstrates that such fish were harvested by a vessel that fished exclusively in the NAFO Regulatory Area, as authorized under § 648.17.

(n) *Summer flounder—(1) All persons.* Unless participating in a research activity as described in § 648.21(g), it is unlawful for any person to do any of the following:

(i) *Permit requirement.* Possess summer flounder in or harvested from the EEZ, either in excess of the possession limit specified in § 648.105, or before or after the time period specified in § 648.102, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(ii) *Transfer and purchase.* (A) Purchase or otherwise receive for a commercial purpose, other than solely

for transport on land, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(B) Purchase or otherwise receive for commercial purposes summer flounder caught by a vessel subject to the possession limit of § 648.105.

(C) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the **Federal Register** notifying permit holders that commercial quota is no longer available in that state for the respective fishing year.

(iii) *Gear requirements.* Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.104 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.105(a).

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.100(f), it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including a moratorium permit) to do any of the following:

(i) *Possession and landing.* (A) Possess 100 lb (45.4 kg) or more of summer flounder between May 1 and October 31, or 200 lb (90.7 kg) or more of summer flounder between November 1 and April 30, unless the vessel meets the gear requirements or restrictions specified in § 648.104.

(B) Possess summer flounder in other than a container specified in § 648.105(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.104(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.104(b).

(C) Land summer flounder for sale in a state after the effective date of a notification in the **Federal Register** notifying permit holders that commercial quota is no longer available in that state.

(D) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any summer flounder, possessed or landed by a vessel not issued a summer flounder moratorium permit.

(ii) *Transfer and purchase.* Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(iii) *Gear requirements.* (A) Fish with or possess nets or netting that do not meet the minimum mesh requirement,

or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(e).

(B) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(C) Fish west or south, as appropriate, of the line specified in § 648.104(b)(1) if exempted from the minimum mesh requirement specified in § 648.104 by a summer flounder exemption permit.

(3) *Charter/party restrictions.* Unless participating in a research activity as described in § 648.100(f), it is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(i) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(ii) Possess summer flounder in excess of the possession limit established pursuant to § 648.105.

(iii) Fish for summer flounder other than during a season specified pursuant to § 648.102.

(iv) Sell or transfer summer flounder to another person for a commercial purpose.

(4) *Presumption.* For purposes of this part, the following presumption applies: All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(o) *Scup*—(1) *All persons.* Unless participating in a research activity as described in § 648.120(e), it is unlawful for any person to do any of the following:

(i) *Permit requirement.* Fish for, catch, or retain for sale, barter, or trade scup in or from the EEZ north of 35°15.3' N. lat. on board a party or charter boat without the vessel having been issued an applicable valid party or charter boat permit pursuant to § 648.4(a)(6), unless the vessel other than a party or charter vessel observes the possession limit restrictions and prohibition against sales specified in § 648.125.

(ii) *Possession and landing.* (A) Possess scup in or harvested from the EEZ north of 35°15.3' N. lat. in an area closed, or before or after a season established pursuant to § 648.122(g).

(B) Possess scup in excess of the possession limit established pursuant to § 648.125.

(C) Fish for, possess, or land scup harvested in or from the EEZ north of 35°15.3' N. lat. for a commercial purpose after the effective date of a notification published in the **Federal Register** stating that the commercial quota has been harvested.

(D) Fish for, catch, possess, or retain scup in or from the EEZ north of 35°15.3' N. lat. in excess of the amount specified in § 648.123, unless the vessel complies with all of the gear restrictions in § 648.123.

(E) Fish for, catch, retain, or land scup in or from the EEZ north of 35°15.3' N. lat. in excess of the limit established through the annual specification process and published in the **Federal Register** pursuant to § 648.120(b)(3), (4), and (7).

(iii) *Minimum fish size.* Possess, other than solely for transport on land, scup harvested in or from the EEZ north of 35°15.3' N. lat. that do not meet the minimum fish size specified in § 648.124.

(iv) *Transfer and purchase.* Purchase or otherwise receive for a commercial purpose scup harvested from the EEZ north of 35°15.3' N. lat., or from a vessel issued a scup moratorium permit after the effective date of a notification published in the **Federal Register** stating that the commercial quota has been harvested.

(v) *Gear requirements.* Fail to comply with any of the gear restrictions specified in § 648.123.

(vi) *Gear restricted areas.* Fish for, catch, possess, retain, or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in §§ 648.122 and 648.123(a), unless the nets or netting are stowed in accordance with § 648.123(b).

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.120(e), it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

(i) *Possession and landing.* (A) Possess scup in excess of the threshold amount specified in § 648.123, unless the vessel meets the minimum mesh-size restrictions specified in § 648.123.

(B) Land scup for sale after the effective date of a notification published in the **Federal Register** stating that the commercial quota has been harvested.

(C) Possess scup in, or harvested from, the EEZ in an area closed by, or before or after a season established pursuant to § 648.122.

(ii) *Transfer and purchase.* (A) Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any scup, unless the transferee has a dealer permit issued under § 648.6.

(B) Transfer scup at sea, or attempt to transfer at sea to any vessel, any scup taken from the EEZ, unless in compliance with the provisions of § 648.13(i).

(3) *Charter/party requirements.* Unless participating in a research activity as described in § 648.120(e), it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire, or when carrying more than three crew members, if a charter boat, or more than five members, if a party boat to:

(i) Carry passengers for hire, or carry more than three crew members for a charter boat, or five crew members for a party boat, while fishing for scup under the terms of a moratorium permit issued pursuant to § 648.4(a)(6).

(ii) Possess scup in excess of the possession limit established pursuant to § 648.125.

(iii) Fish for scup other than during a season established pursuant to § 648.122.

(iv) Sell scup or transfer scup to another person for a commercial purpose other than solely for transport on land.

(v) Possess scup that do not meet the minimum fish size specified in § 648.124(b).

(4) *Presumption.* For purposes of this part, the following presumption applies: All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, north of 35°15.3' N. lat., unless a preponderance of the evidence shows the fish were harvested by a vessel that fished exclusively in state waters.

(p) *Black sea bass—(1) All persons.* Unless participating in a research activity as described in § 648.140(e), it is unlawful for any person to do any of the following:

(i) *Permit requirement.* Possess black sea bass in or harvested from the EEZ north of 35°15.3' N. lat., either in excess of the possession limit established pursuant to § 648.145, or before or after the time period established pursuant to § 648.142, unless the person is operating a vessel issued a moratorium permit under § 648.4 and the moratorium permit is on board the vessel.

(ii) *Possession and landing.* Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3' N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.144(a)(1)(i), unless the vessel complies with all of the gear restrictions at § 648.144(a).

(iii) *Transfer and purchase.* Purchase or otherwise receive for commercial purposes, other than solely for transport on land, black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3' N. lat., after the effective date of a notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(iv) *Gear restriction.* Fail to comply with any of the gear restrictions specified in § 648.144.

(v) *Minimum fish size.* Fish for, possess, land, or retain black sea bass in or from the EEZ that does not comply with the minimum fish size specified in § 648.143.

(2) *Vessel and operator permit holders.* Unless participating in a research activity as described in § 648.140(e), it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(i) *Permit requirement.* Sell or transfer to another person for a commercial purpose, other than solely for transport on land, any black sea bass from a vessel, unless the transferee has a valid black sea bass dealer permit.

(ii) *Possession and landing.* (A) Land black sea bass for sale in any state, or part thereof, north of 35°15.3' N. lat. after the effective date of a notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(B) Possess, retain, or land black sea bass harvested in or from the EEZ in excess of the commercial possession limit established at § 648.140.

(C) Land black sea bass for sale in any state south of North Carolina.

(D) Possess black sea bass after the effective date of a notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3' N. lat.

(3) *Charter/party restrictions.* Unless participating in a research activity as described in § 648.140(e), it is unlawful

for the owner or operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five members, if a party boat, to:

(i) Fish for black sea bass under the terms of a moratorium permit issued pursuant to § 648.4(a)(7).

(ii) Possess, retain, or land black sea bass in excess of the possession limit established pursuant to § 648.145.

(iii) Fish for black sea bass other than during a time allowed pursuant to § 648.142.

(iv) Sell black sea bass or transfer black sea bass from a vessel to another person for a commercial purpose other than solely for transport on land.

(4) *Presumption.* For purposes of this part, the following presumption applies: All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3' N. lat.

(q) *Bluefish.* Unless participating in a research activity as described in § 648.160(h), it is unlawful for any person to do any of the following:

(1) *Permit requirement.* Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) *Possession and landing.* (i) Land bluefish for sale in a state after the effective date of a notification in the **Federal Register** pursuant to § 648.161(b), that the commercial quota is no longer available in that state.

(ii) Land bluefish for sale after the effective date of a notification in the **Federal Register** pursuant to § 648.161(a), that the bluefish fishery is closed.

(3) *Transfer and purchase.* (i) Sell, barter, trade or transfer; or attempt to sell, barter, trade or otherwise transfer; other than for transport, bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under § 648.4(a)(8)(i).

(ii) Purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the **Federal Register** stating that the commercial quota has been harvested.

(iii) Purchase or otherwise receive for a commercial purpose bluefish harvested by a Federally permitted vessel after the effective date of the notification published in the **Federal Register** stating that the commercial quota has been harvested.

(4) *Charter/party restrictions.* Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a bluefish permit issued under § 648.4(a)(8).

(5) *Presumption.* For purposes of this part, the following presumption applies: All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.

(r) *Atlantic herring.*—(1) *All persons.* It is unlawful for any person to do any of the following:

(i) *Permit requirement.* Operate, or act as an operator of, a vessel with an Atlantic herring permit, or a vessel fishing for or possessing herring in or from the EEZ, unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Possession and landing.* (A) Fish for, possess, retain or land herring, unless:

(1) The herring are being fished for, or were harvested in or from, the EEZ by a vessel holding a valid herring permit under this part and the operator on board such vessel possesses a valid operator permit that is on board the vessel.

(2) The herring were harvested by a vessel not issued a herring permit that fished exclusively in state waters.

(3) The herring were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(4) The herring were possessed for personal use as bait.

(5) Unless otherwise specified in § 648.17.

(B) Possess, transfer, receive, or sell; or attempt to transfer, receive, or sell; more than 2,000 lb (907.2 kg) of herring per trip; or land, or attempt to land more than 2,000 lb (907.2 kg) of herring per day in or from a management area closed pursuant to § 648.201(a), if the vessel has been issued and holds a valid herring permit.

(C) Possess or land more herring than is allowed by the vessel's Atlantic herring permit.

(iii) *Processing requirements.* (A) Process herring that was caught in or from the EEZ by a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii), in excess of the specification of USAP.

(B) Discard herring carcasses at sea after removing the roe, if a Federally permitted vessel; or in the EEZ, if not a Federally permitted vessel.

(C) Catch, take, or harvest herring for roe, at sea, if a Federally permitted vessel; or if not Federally permitted, in or from the EEZ in excess of any limit established by § 648.206(b)(24).

(iv) *Transfer and purchase.* (A) Purchase, possess, receive; or attempt to purchase, possess, or receive; as a dealer, or in the capacity of a dealer, herring harvested in or from the EEZ, without having been issued, and in possession of, a valid herring dealer permit.

(B) Purchase, possess, receive; or attempt to purchase, possess, or receive; as a processor, or in the capacity of a processor, herring from a fishing vessel with a herring permit or from a dealer with a herring dealer permit, without having been issued, and in possession of, a valid herring processor permit.

(C) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer; for a commercial purpose, any herring, unless the harvesting vessel has been issued a herring permit, or unless the herring were harvested by a vessel without a Federal herring permit that fished exclusively in state waters.

(D) Purchase, possess, or receive, for a commercial purpose; or attempt to purchase, possess, or receive, for a commercial purpose; herring caught by a vessel without a herring permit, unless the herring was harvested by a vessel without a Federal herring permit that fished exclusively in state waters.

(E) Transfer, or attempt to transfer, herring to a Canadian transshipment vessel that is permitted in accordance with Public Law 104–297, if the amount of herring transshipped exceeds the amount of the border transfer specified in § 648.200.

(v) *Gear and vessel requirements.* (A) If fishing with midwater trawl or purse seine gear, fail to comply with the requirements of § 648.80(d) and (e).

(B) Catch, take, or harvest Atlantic herring in or from the EEZ with a U.S. vessel that exceeds the size limits specified in § 648.4(a)(10)(iii).

(vi) *Area requirements.* (A) For the purposes of observer deployment, fail to notify NMFS at least 72 hr prior to departing on a trip by a limited access herring vessel fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17).

(B) Possess, land, transfer, receive, sell, purchase, trade, or barter; or attempt to transfer, receive, sell, purchase, trade, or barter, or sell more than 2,000 lb (907 kg) of Atlantic

herring per trip taken from the GOM/GB Herring Exemption Area, defined in § 648.86(a)(3)(ii)(A)(1), after the haddock cap has been reached pursuant to § 648.86(a)(3), unless all herring possessed or landed by the vessel was caught outside of GOM/GB Herring Exemption Area.

(C) Transit the GOM/GB Herring Exemption Area, when the 2,000-lb (907.2-kg) limit specified in § 648.86(a)(3)(ii)(A)(1) is in place, in possession of more than 2,000 lb (907.2 kg) of herring, unless all herring on board was caught outside of GOM/GB Herring Exemption Area and all fishing gear is stowed and not available for immediate use, as required by § 648.23(b).

(D) Fish for herring in Area 1A from June 1 through September 30 with midwater trawl gear.

(vii) *Transit and transport.* (A) Transit or be in an area closed to fishing for Atlantic herring pursuant to § 648.201(a) with more than 2,000 lb (907.2 kg) of herring, unless all fishing gear is stowed as specified by § 648.23(b).

(B) Receive Atlantic herring at sea in or from the EEZ, solely for transport, without a letter of authorization from the Regional Administrator.

(C) Fail to comply with a letter of authorization from the Regional Administrator.

(D) Transit Area 1A from June 1 through September 30 with more than 2,000 lb (907.2 kg) of herring without mid-water trawl gear properly stowed as required by § 648.23(b).

(E) Discard haddock at sea that has been brought on deck, or pumped into the hold, of a limited access herring vessel.

(viii) *VMS requirements.* (A) Catch, take, or harvest Atlantic herring in or from the EEZ, if a limited access herring vessel, unless equipped with an operable VMS unit.

(B) Fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS, if a limited access herring vessel, at least 6 hr prior to landing herring at the end of a fishing trip.

(2) *Vessel and operator permit holders.* It is unlawful for any person owning or operating a vessel holding a valid Federal Atlantic herring permit, or issued an operator's permit, to do any of the following:

(i) Sell, purchase, receive, trade, barter, or transfer haddock or other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake); or attempt to sell, purchase, receive, trade, barter, or transfer haddock or other

regulated NE for human consumption; if the regulated NE multispecies are landed by a vessel holding an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(ii) Fail to comply with requirements for herring processors/dealers that handle individual fish to separate out, and retain, for at least 12 hr, all haddock offloaded from vessels holding an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(iii) Sell, purchase, receive, trade, barter, or transfer; or attempt to sell, purchase, receive, trade, barter, or transfer; to another person, any haddock or other regulated NE multispecies (cod, witch flounder, plaice, yellowtail flounder, pollock, winter flounder, windowpane flounder, redfish, and white hake) separated out from a herring catch offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(iv) While operating as an at-sea herring processor, fail to comply with requirements to separate out and retain all haddock offloaded from a vessel that has an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(3) *Presumption*. For purposes of this part, the following presumption applies: All Atlantic herring retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such Atlantic herring were harvested by a vessel fishing exclusively in state waters.

(s) *Spiny dogfish*—(1) *All persons*. It is unlawful for any person to do any of the following:

(i) *Permit requirement*. Purchase or otherwise receive, other than solely for transport on land, spiny dogfish from any person on board a vessel issued a Federal spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(ii) *Transfer and purchase*. Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a Federally permitted vessel in any state, from Maine to Florida, after the EEZ is closed to the harvest of spiny dogfish.

(2) *Vessel and operator permit holders*. It is unlawful for any person owning or operating a vessel issued a valid Federal spiny dogfish permit or issued a valid Federal operator's permit to do any of the following:

(i) *Permit requirement*. Sell, barter, trade or transfer; or attempt to sell,

barter, trade or otherwise transfer; other than solely for transport on land, spiny dogfish, unless the dealer, transferor, or transferee has a valid dealer permit issued under § 648.6(a).

(ii) *Possession and landing*. (A) Fish for or possess spiny dogfish harvested in or from the EEZ after the EEZ is closed to the harvest of spiny dogfish.

(B) Land spiny dogfish for a commercial purpose after the EEZ is closed to the harvest of spiny dogfish.

(C) Possess more than the daily possession limit of spiny dogfish specified in § 648.235.

(iii) *Prohibition on finning*. Violate any of the provisions in §§ 600.1203 and 600.1204 applicable to the dogfish fishery that prohibit finning.

(t) *Red crab*. It is unlawful for any person to do any of the following:

(1) *Permit requirement*. Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; any red crab or red crab parts in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid Federal limited access red crab vessel permit or Federal red crab incidental catch permit.

(2) *Possession and landing*. (i) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; red crab in excess of the limits specified in § 648.263.

(ii) *Restriction on female red crabs*. Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; female red crabs in excess of one standard U.S. fish tote.

(3) *Transfer and purchase*. (i) Transfer at sea, or attempt to transfer at sea, either directly or indirectly, any red crab or red crab parts taken in or from the EEZ portion of the red crab management unit to any vessel.

(ii) Purchase, possess, or receive; or attempt to purchase, possess, or receive; more than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight in accordance with the conversion provisions in § 648.263(a)(2), caught or possessed in the EEZ portion of the red crab management unit by a vessel without a valid Federal limited access red crab permit.

(iii) Purchase, possess, or receive; or attempt to purchase, possess, or receive; up to 500 lb (226.8 kg) of whole red crab, or its equivalent in weight in accordance with the conversion provisions in § 648.263(a)(2), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access

red crab permit or red crab incidental catch permit under this subpart.

(4) *DAS*. (i) Possess, transport, land, sell, trade, or barter; or attempt to possess, transport, land, sell, trade, or barter; while fishing under a red crab DAS, more than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight in accordance with the conversion provisions in § 648.263(a)(2), per fishing trip, in or from the Red Crab Management Unit, unless in possession of a valid Federal limited access red crab vessel permit.

(ii) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to possess, transport, land, sell, trade, or barter; red crab in or from the Red Crab Management Unit if the vessel has declared out of the fishery prior to the start of the fishing year.

(5) *Prohibitions on processing and mutilation*. (i) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote, if fishing under a red crab DAS with a valid Federal limited access red crab permit.

(ii) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid Federal limited access red crab permit or has been issued a valid Federal limited access red crab permit, but is not fishing under a red crab DAS.

(iii) Retain, possess, or land more than two claws and eight legs per crab if the vessel has been issued a valid Federal red crab incidental catch permit, or has been issued a valid Federal limited access red crab permit and is not fishing under a red crab DAS.

(iv) Possess or land red crabs that have been fully processed at sea, *i.e.*, engage in any activity that removes meat from any part of a red crab, unless a preponderance of available evidence shows that the vessel fished exclusively in state waters and was not issued a valid Federal permit.

(6) *Gear requirements*. Fail to comply with any gear requirements or restrictions specified at § 648.264.

(7) *Presumption*. For purposes of this part, the following presumption applies: All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

(u) *Golden tilefish*. It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements*—(i) *Operator permit*. Operate, or act as an operator of, a vessel with a tilefish permit, or a vessel fishing for or possessing tilefish in or from the Tilefish Management Unit, unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Dealer permit*. Purchase, possess, receive for a commercial purpose; or attempt to purchase, possess, or receive for a commercial purpose; as a dealer, or in the capacity of a dealer, tilefish that were harvested in or from the Tilefish Management Unit, without having been issued, and in possession of, a valid tilefish dealer permit.

(iii) *Vessel permit*. Sell, barter, trade, or otherwise transfer from a vessel; or attempt to sell, barter, trade, or otherwise transfer from a vessel; for a commercial purpose, other than solely for transport on land, any tilefish, unless the vessel has been issued a tilefish permit, or unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.

(2) *Possession and landing*. (i) Fish for, possess, retain, or land tilefish, unless:

(A) The tilefish are being fished for or were harvested in or from the Tilefish Management Unit by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in state waters.

(C) The tilefish were harvested in or from the Tilefish Management Unit by a vessel engaged in recreational fishing.

(ii) Possess tilefish harvested in or from the Tilefish Management Unit in excess of the trip limit, pursuant to § 648.292, unless the vessel holds a valid limited access tilefish permit.

(iii) Land tilefish harvested in or from the Tilefish Management Unit for sale after the effective date of a notification in the **Federal Register**, pursuant to § 648.291, that notifies permit holders in a limited access category that the quota for that category is no longer available for the respective year.

(iv) Land tilefish in or from the Tilefish Management Unit, in excess of the trip limit pursuant to § 648.292, unless the vessel holds a valid limited access tilefish permit.

(3) *Transfer and purchase*. Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land;

tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in state waters.

(4) *Presumption*. For purposes of this part, the following presumption applies: All tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Tilefish Management Unit, unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in state waters.

(v) *Skates*—(1) *All persons*. It is unlawful for any person to fish for, possess, transport, sell or land skates in or from the EEZ portion of the skate management unit, unless:

(i) Onboard a vessel that possesses a valid skate vessel permit.

(ii) Onboard a Federally permitted lobster vessel (*i.e.*, transfer at sea recipient) while in possession of whole skates as bait only less than the maximum size specified at § 648.322(b)(2) and in accordance with § 648.322(c).

(2) *All Federal permit holders*. It is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(i) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the skate management unit specified at § 648.2.

(ii) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

(3) *Skate permitted vessel requirements*. It is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(i) *Winter skates*. Fail to comply with the conditions of the skate wing possession and landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(ii) *Possession and transfer*. (A) Transfer at sea, or attempt to transfer at sea, to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(B) Purchase, possess, trade, barter, or receive; or attempt to purchase, possess, trade, barter, or receive; skates caught in the EEZ portion of the skate management unit by a vessel that has not been issued a valid Federal skate permit under this part.

(C) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land,

sell, trade, or barter; whole skates and skate wings in excess of the possession limits specified at § 648.322.

(iii) *DAS notification and skate wing possession*. Fail to comply with the provisions of the DAS notification program specified in §§ 648.53, 648.82, and 648.92; for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively; when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(iv) *SNE Trawl and Gillnet Exemption areas restrictions*. Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(4) *Presumption*. For purposes of this part, the following presumption applies: All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the skate management unit or only in state waters.

■ 11. In § 648.14, paragraphs (k)(5)(ix); (k)(5)(vii)(B); (k)(9)(i)(A); (k)(9)(ii)(G); (k)(11)(i)(A)(3); (k)(11)(ii); (k)(11)(iii)(A), (B), (E), and (F); (k)(11)(iv)(B); (k)(11)(v)(B)(1) and (2); (k)(12)(i)(B); (k)(12)(iv); (k)(12)(v)(A) through (F), (k)(12)(v)(G)(2) and (3), and (k)(12)(v)(H) through (J); (k)(12)(vi)(A) through (D), (k)(12)(vi)(E)(1) and (2), and (k)(12)(vi)(F) through (I); (k)(12)(vii)(A)(5)(i) and (k)(12)(vii)(B)(3); (k)(13)(ii)(B), (k)(13)(ii)(D)(1) and (2), (k)(13)(ii)(D)(3)(i) and (ii), and (k)(13)(ii)(H); (k)(16)(iii)(A) and (C); are suspended from May 1, 2009, through October 28, 2009.

■ 12. In § 648.14, from May 1, 2009, through October 28, 2009, paragraphs (k)(5)(vii)(C); (k)(6)(ii)(C); (k)(9)(i)(C) and (D); (k)(11)(i)(A)(5); (k)(11)(iii)(G) through (L); (k)(11)(iv)(C); (k)(11)(vii); (k)(12)(i)(C); (k)(12)(v)(G)(4), (5), (6); (k)(12)(v)(H)(3) and (4); and (k)(12)(v)(K) through (S); (k)(12)(vi)(E)(3), (4); and (k)(12)(vi)(J) through (S); (k)(12)(vii)(A)(8); and (k)(12)(vii)(B)(4) and (5); (k)(12)(viii); (k)(13)(ii)(D)(5) through (8); (k)(13)(ii)(I) through (K); (k)(16)(iii)(D) and (E); (k)(16)(v) are added to read as follows:

§ 648.14 Prohibitions.

*	*	*	*	*
(k)	*	*	*	
(5)	*	*	*	
(vii)	*	*	*	

(C) Possess, land, or fish for regulated species while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

* * * * *

(6) * * *

(ii) * * *

(C) *Hook Gear*. Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(11)(iv)(F).

* * * * *

(9) * * *

(i) * * *

(C) If fishing under a NE multispecies Category A DAS in one or both of the differential DAS areas defined under § 648.82(e)(4)(i), fail to declare into one or both of the areas through VMS, as required under § 648.82(e)(4)(ii).

(D) If fishing under a NE multispecies Category A DAS in one or both of the differential DAS areas defined in § 648.82(e)(4)(i), and under the restrictions of one or more of the Special Management Programs under § 648.85, fail to comply with the most restrictive regulations.

* * * * *

(11) * * *

(i) * * *

(A) * * *

(5) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under most restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(viii)(A).

* * * * *

(iii) * * *

(G) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required under § 648.85(a)(3)(viii)(A).

(H) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(viii).

(I) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared

area, unless in compliance with the applicable restrictions specified under § 648.85(a)(3)(viii)(A) or (B).

(J) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(viii)(A)(1).

(K) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(viii)(A).

(L) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via VMS that the vessel is electing to fish in this manner, as required by § 648.85(a)(3)(viii)(A)(1).

(iv) * * *

(C) Fail to comply with the reporting requirements under § 648.85(a)(3)(viii)(A)(2) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

* * * * *

(vii) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl, flounder trawl net, or Ruhle trawl, as specified in § 648.85(a)(3)(ix) and (b)(10)(iv)(j)(3), unless otherwise allowed under the Eastern U.S./Canada Haddock SAP rules in § 648.85(b)(8)(v)(E).

(12) * * *

(i) * * *

(C) If fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Pilot Program specified in § 648.85(b)(10), or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

* * * * *

(v) * * *

(G) * * *

(4) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(10)(iv)(F).

(5) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(10), if the program has been closed as specified in § 648.85(b)(10)(iv)(H) or (b)(10)(vi).

(6) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS after the program has closed, as required under § 648.85(b)(10)(iv)(G) or (H).

(H) * * *

(3) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS requirement specified in § 648.85(b)(10)(iv)(A).

(4) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS declaration requirement specified in § 648.85(b)(10)(iv)(C).

* * * * *

(K) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the requirements and restrictions specified in § 648.85(b)(10)(iv)(A) through (F), (I), and (J).

(L) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(10)(iv)(E).

(M) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the landing limits specified in § 648.85(b)(10)(iv)(D).

(N) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(10)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(10)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(O) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the observer notification requirement specified in § 648.85(b)(10)(iv)(B).

(P) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the reporting requirements specified in § 648.85(b)(10)(iv)(I).

(Q) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A), or other approved gear as described under § 648.85(b)(10)(iv)(J).

(R) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as described under § 648.85(a)(3)(ix)(A), or other approved gear as described under § 648.85(b)(10)(iv)(J).

(S) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(10)(iv)(E).

(vi) * * *

(E) * * *

(3) If fishing in the CA I Hook Gear Haddock SAP specified in

§ 648.85(b)(11), fail to comply with the VMS requirements specified in § 648.85(b)(11)(iv)(B).

(4) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the VMS declaration requirement specified in § 648.85(b)(11)(iv)(D).

* * * * *

(J) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the requirements and conditions specified in § 648.85(b)(11)(iv), and (b)(11)(v) or (b)(11)(vi), whichever is applicable.

(K) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(11)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(11)(iv), and (b)(11)(v) or (b)(11)(vi), whichever is applicable.

(L) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), outside of the season specified in § 648.85(b)(11)(iii).

(M) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(11)(ii), if that area is closed as specified in § 648.85(b)(11)(iv)(I) or (b)(11)(vi)(F).

(N) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the DAS use restrictions specified in § 648.85(b)(11)(iv)(A), and (b)(11)(v)(A) or (b)(11)(vi)(A), whichever is applicable.

(O) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the observer notification requirements specified in § 648.85(b)(11)(iv)(C).

(P) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the gear restrictions specified in § 648.85(b)(11)(iv)(E), and (b)(11)(v)(B) or (b)(11)(vi)(B), whichever is applicable.

(Q) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the landing limits specified in § 648.85(b)(11)(iv)(H), and (b)(11)(v)(C) or (b)(11)(vi)(C), whichever is applicable.

(R) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the reporting requirement specified in § 648.85(b)(11)(v)(D) or (b)(11)(vi)(D), whichever is applicable.

(S) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fish with squid as bait, as prohibited at § 648.85(b)(11)(iv)(J).

(vii) * * *

(A) * * *

(8) If possessing a Rühle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(10)(iv)(J)(1) or (b)(8)(v)(E)(1), fail to comply with the net specifications under § 648.85(b)(10)(iv)(J)(3).

(B) * * *

(4) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (M).

(5) Fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), if the SAP is closed as specified in § 648.85(b)(8)(v)(L) or (N).

(viii) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in §§ 648.85(b)(3)(xi), 48.85(b)(11)(iv)(H) or 648.85(b)(8)(v)(I).

(13) * * *

(ii) * * *

(D) * * *

(5) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(l)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(l)(4).

(6) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(l)(2).

(7) *Cod Running Clock.* (i) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(l)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(l)(3).

(ii) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(l)(1)(iii)(B).

(iii) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(l)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(l)(3).

(iv) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on

board the vessel as required under § 648.86(l)(2)(ii)(B).

(8) Fail to declare through VMS the intent to be exempt from the GOM cod trip limit under § 648.86(l)(1), as required under § 648.86(l)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(l)(1).

* * * * *

(I) Possess or land per trip more than the possession or landing limits specified under §§ 648.86(a), (c), (e), (g), (h), (j), (l), (m), and (n) and 648.82(b)(5) and (6) with NMS permit, if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(J) Possess or land more witch flounder than allowed under § 648.86(m).

(K) Retain or land zero retention stocks as specified under § 648.86(n).

* * * * *

(16) * * *

(iii) * * *

(D) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(vi) or (c)(5)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

(E) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in § 648.89(c)(1)(vi) or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing under § 648.89(c)(5)(v).

* * * * *

(v) If fishing as a private recreational and charter/party vessel in the SNE/MA winter flounder stock area defined in § 648.85(b)(10)(v)(E), fish for or retain winter flounder or transit this area in possession of winter flounder caught outside this area, unless all bait and hooks are removed from fishing rods and any winter flounder on board has been gutted and stored.

■ 13. In § 648.51, paragraph (b)(4)(v) is added to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(4) * * *

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes

under a pressure or pull of 8 kg (17.64 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes. The mesh in the twine top must be measured at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

* * * * *

■ 14. In § 648.52, paragraph (c) is revised to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(c) A vessel issued an Incidental scallop permit, or an IFQ or NGOM scallop permit that is not declared into the IFQ or NGOM scallop fishery as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

* * * * *

■ 15. In § 648.53, paragraph (b)(4) introductory text, including the table, is revised to read as follows:

§ 648.53 Total allowable catch, DAS allocations, and Individual Fishing Quotas.

* * * * *

(b) * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has declared out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made an appropriate VMS declaration, as specified in § 648.10(f), does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops, and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2008	2009 ¹
Full-time	35	42
Part-time	14	17
Occasional	3	3

¹ If the IFQ program implementation is delayed beyond March 1, 2009, the 2009 DAS allocations will be: Full-time—37, part-time—15, occasional—3.

* * * * *

■ 16. In § 648.54, paragraphs (a)(1), (a)(2), and (d) are revised to read as follows:

§ 648.54 State waters exemption.

(a) * * *

(1) *DAS requirements.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section, and the notification requirements of § 648.10(f)(5).

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under this paragraph (a), and that has complied with the notification requirements of § 648.10(f)(5), is also exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1), and (e)(2), and the possession restrictions specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section.

* * * * *

(d) *Notification requirements.* Vessels fishing under the exemptions provided by paragraph(s) (a)(1) and/or (a)(2) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(f)(5).

* * * * *

■ 17. In § 648.60, paragraph (a)(2) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(f) and vessel notification requirements specified in § 648.11(g) for observer deployment.

* * * * *

■ 18. In § 648.82:

■ A. The suspension of paragraphs (e)(2)(iii)(B), (e)(3), (j)(1)(ii)(B), and (j)(2) is lifted.

■ B. Paragraphs (e)(2)(iii)(B), (e)(3), (j)(1)(ii)(B), and (j)(2) are revised.

■ C. Paragraphs (e)(2)(iii)(B) and (e)(3) are suspended from May 1, 2009, through October 28, 2009.

The revisions read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(B) *Differential DAS counting when fishing in the SNE Differential DAS Area.* For NE multispecies DAS vessels that intend to fish, or do fish, some or all of their trip under a Category A DAS in the SNE Differential DAS Area, other than for transiting purposes, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the duration of the time spent in the SNE Differential DAS Area, as determined from VMS positional data. A vessel that has not declared its intent to fish in the SNE Differential DAS Area, and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the SNE Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area and the vessel declares immediately upon entering the SNE Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip. If the Regional Administrator requires the use of the DAS call-in, as described under § 648.10(e)(2)(iv), a vessel that fishes any portion of its trip in the SNE Differential DAS Area will be charged DAS at the rate of 2 to 1 for the entire trip.

* * * * *

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would

have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in one of the Differential DAS Areas, defined in paragraph (e)(2)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(2)(iii) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(2)(iii) or (e)(2)(iv).

* * * * *

- (j) * * *
- (1) * * *
- (ii) * * *

(B) Vessels shall declare their required time periods through the notification procedures specified in § 648.10(k)(2).

* * * * *

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(h)(5). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized by § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

* * * * *

■ 19. In § 648.85:

- A. The suspension of paragraphs (a)(3)(ii)(A)(1), (b)(6)(i), (b)(6)(iv)(A) and (B), (b)(6)(v), and (b)(7)(iv)(A) is lifted.
- B. Paragraphs (a)(3)(ii)(A)(1), (b)(6)(i), (b)(6)(iv)(A) and (B), (b)(6)(v), and (b)(7)(iv)(A) are revised.
- C. Paragraphs (a)(3)(ii)(A)(1), (b)(6)(i), (b)(6)(iv)(A) and (B), (b)(6)(v), and (b)(7)(iv)(A) are suspended from May 1, 2009 through October 28, 2009.

The revisions read as follows:

§ 648.85 Special management programs.

- (a) * * *
- (3) * * *
- (ii) * * *
- (A) * * *

(1) The vessel operator must notify NMFS via VMS prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS, once a vessel electing to fish outside of the Eastern U.S./Canada Area has left the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS Demarcation Line at the start of its fishing trip until the time the vessel crosses the VMS Demarcation Line on its return to port, in accordance with § 648.10(e)(2)(iii) and (e)(2)(iv).

* * * * *

(b) * * *

(6) *Regular B DAS Program—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Program, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may fish under the B Regular DAS Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Program and in a SAP on the same trip.

(iv) *Program Requirements—(A) VMS requirement.* A NE multispecies DAS vessel fishing in the Regular B DAS Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip declared into the Regular B DAS Program as required by paragraph (b)(6)(iv)(C) of this section, and in accordance with the Regional

Administrator's instructions. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity on that trip to that area only (*i.e.*, the vessel operator may change his/her plans regarding planned fishing areas).

* * * * *

(v) *Definition of incidental TAC stock areas.* Under the Regular B DAS Program, the species stock areas associated with the incidental TACs are defined below. Copies of a chart depicting these areas are available upon request from the Regional Administrator.

* * * * *

(7) * * *

(iv) * * *

(A) *DAS use restrictions.* Vessels fishing in the Closed Area I Hook Gear Haddock SAP may not initiate a DAS flip. Vessels are prohibited from fishing in the Closed Area I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described in paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

* * * * *

■ 20. In § 648.86:

- A. The suspension of paragraph (b)(1)(ii)(B) is lifted.
- B. Paragraphs (b)(1)(ii)(B) and (i) are revised.
- C. Paragraph (b)(1)(ii)(B) is suspended from May 1, 2009 through October 28, 2009.

The revisions read as follows:

§ 648.86 NE multispecies possession restrictions.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Vessels that have been authorized by the Regional Administrator, in lieu of VMS, to utilize the DAS call-in system, as specified in § 648.10(h), may not call out of the DAS program under § 648.10(h)(5) and may not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.)

* * * * *

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit.* A vessel that has

ended a trip as specified in § 648.10(e)(2)(iii) or (h)(5) that possesses on board species regulated by a daily possession limit (*i.e.*, pounds per DAS), as specified at § 648.85 or § 648.86, must offload species in excess of the daily landing limit prior to leaving port on a subsequent trip. A vessel may retain on board up to one day's worth of such species prior to the start of a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested in excess of 1,000 lb (453 kg) (*i.e.*, the vessel may retain up to 1,000 lb (453 kg)

of Georges Bank cod, but must offload any additional cod), but may retain on board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS Demarcation Line to begin a subsequent trip.

* * * * *

■ 21. In § 648.95, paragraph (e)(4) is revised to read as follows:

§ 648.95 Offshore fishery program in the SFMA.

* * * * *

(e) * * *

(4) A vessel issued a Category F permit must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 during the entire season established under paragraph (d) of this section. Unless otherwise required to maintain an operational

VMS unit under the VMS notification requirements specified at § 648.10(b), a vessel issued a Category F permit may turn off its VMS unit outside of that season.

* * * * *

■ 22. In § 648.263, paragraph (b)(3) is revised to read as follows:

§ 648.263 Red crab possession and landing restrictions.

* * * * *

(b) * * *

(3) *Mutilation restrictions.* (i) A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies.

(ii) A vessel may not retain, possess, or land more than two claws and eight legs per crab.

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Monday, May 4, 2009

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FEDERAL REGISTER PAGES AND DATE, MAY

20201-20404.....	1
20405-20558.....	4

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	258.....20227
Proclamations:	
8366.....	20403
5 CFR	
532.....	20405
10 CFR	
Proposed Rules:	
37.....	20235
600.....	20427
12 CFR	
Proposed Rules:	
1282.....	20236
14 CFR	
71.....	20410
73.....	20201
91.....	20202
135.....	20202
Proposed Rules:	
25.....	20427
39.....	20431
71.....	20443
135.....	20263
16 CFR	
3.....	20205
4.....	20205
17 CFR	
200.....	20411
33 CFR	
165.....	20412, 20414
Proposed Rules:	
165.....	20270
34 CFR	
668.....	20210
686.....	20210
690.....	20210
691.....	20210
38 CFR	
38.....	20225
40 CFR	
239.....	20227
46 CFR	
2.....	20416
8.....	20416
189.....	20416
47 CFR	
73.....	20419, 20420
Proposed Rules:	
73.....	20444, 20445
49 CFR	
Proposed Rules:	
571.....	20445
50 CFR	
402.....	20421
622.....	20229
648.....	20230, 20423, 20528
Proposed Rules:	
648.....	20448

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S. 383/P.L. 111-15

Special Inspector General for the Troubled Asset Relief Program Act of 2009 (Apr. 24, 2009; 123 Stat. 1603)

Last List April 27, 2009

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